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PAPACY AND CHURCH: THE ASSERTION AND RECEPTION OF PAPAL AUTHORITY AND JUSTICE IN THE PAPAL LETTERS, 1143-53

THESIS SUBMITTED FOR THE DEGREE OF PH.D IN MEDIEVAL HISTORY

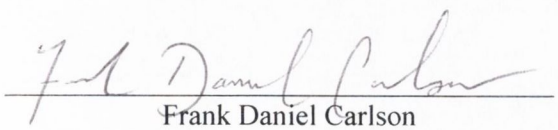
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SUMMARY

The subject of this thesis is papal authority and administrative practice in the period 1143-53, and how they are reflected through the letters of the papacy. Accordingly, the focus here is on the everyday business of the papacy and how its authority was expressed and at the same time received and utilised by the Church. As a result, the broader question of the curia's own territorial-political 'policy' is here largely left aside. With that said, the curia enjoyed a decade of relative peace, both in respect to an absence of schism, or contending popes, and with regard to most of the great secular princes. And accordingly the papacy's own self-expression of authority tended to be benign: the curia tended to treat its own authority and primacy as something so firmly established that it seldom required fervent or peremptory articulation. Yet, this was as much a result of the fact that the curia in this decade did not often need to assert its authority on its own behalf, so great was the flood of petitioners who on their own initiative sought out the benefits of papal authority and justice. Indeed, this thesis is based upon both a statistical and contextual analysis of all extant papal documents of the same period which demonstrates that 'policy,' or practice, in this period was almost strictly responsive; and as such, papal business, its *negotia*, was consumed largely by the plaints or petitions of the members of the clerical hierarchy throughout the provinces of western Europe who brought before the curia all manner of their claims, grievances, typically of a temporal nature, and lawsuits. In this way, the papacy became primarily responsible for overseeing the maintenance and protection of the rights (*iura*) and properties of an increasingly unified and now liberated Church. The Church was exceedingly wealthy; but that wealth was equally vulnerable, inside and out of the hierarchy. And as the Church continued to expand and grow, properties rights and rights of all kinds remained ill-defined; and a culture of rampant clerical competition, as well as secular depredation, compelled the churches to seek out a stronger authority which could confirm, secure, and enlarge their rights and possessions.

In achieving these ends, the procedures of the papal systems of justice and writing office, while operating on basically rational and modern principles, were not as yet thoroughly systematised. Thus, causes often proceeded in an *ad hoc* fashion. As the structural and legal systems of the Church grew, however, throughout the twelfth century, and as the demand for the papacy's justice and its legitimising authority and instruments swelled, especially from mid-century, the papal curia freely offered the services of its authority, of its governance, and legal expertise, culminating invariably in written form, through an increasing reliance on procedures of delegation, especially to members of the episcopate. Papal business, which was the business of the provinces, was invariably delegated back to the provinces for execution or enforcement, or causes

were delegated outright, providing the curia with a means of keeping pace with demand, in turn contributing to the growth of the papacy's own institutions, authority, and prestige, while drawing the entire ecclesiastical government, with the curia at its top, more closely together. As a further result, pastoral and moral, or 'spiritual,' initiatives were largely neglected by a central office as yet incapable of actively intervening in the affairs of the provinces as far as their sacramental and religious welfare and affairs of their personnel were concerned. What that central corporate office could offer, in a culture of precarious security and strident competition, was adjudication and redress to its aggrieved 'members,' the clergy—though laymen alike availed themselves of its utility—and assurance of their existing rights. Thus, in a circular manner, the demand from the provinces for the justice, protection, and paper of a curia supported by the pope's primacy contributed to and in effect created trust in and recognition of that very same primacy, and the growth and consolidation of curial and Church government, and determined the drift of papal ecclesiastical governance. The sum result of these things was that the primary operation of the papacy and curia, and its authority, became the administration of its justice and written confirmation for those who actively sought it, and an overall concern for the temporal state and things of the Church. As both a subject-matter and time-period left largely and curiously unstudied by historians, the following thesis attempts to explore and understand through the extant documentary output of the papacy, as the clearest direct record of papal practice, all of these various aspects, especially the nature of the systems of papal justice.

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ABBREVIATIONS

AAWG: DF. Abhandlungen der Akademie der Wissenschaften in Göttingen: Philologisch-historische Klasse: Dritte Folge.

AGWG: DF/NF. Abhandlungen der Gesellschaft der Wissenschaften zu Göttingen: Philologisch-historische Klasse: Dritte Folge/Neue Folge.

Ältere PU in den päpstlichen Registern 3. 'Ältere Papsturkunden in den päpstlichen Registern 3,' ed. P.F. Kehr, *NKGWG* (1902), 498-558.

Annales Casinenses. *Annales Casinenses*, *MGH SS* 19, 303-20.

Annales Ceccanenses. *Annales Ceccanenses*, *MGH SS* 19, 275-302.

Antiquitates. *Antiquitates italicae medii aevii*, ed. L.A. Muratori (Milan, 1738-; rept., Bologna, 1965).

APRI. *Acta pontificum Romanorum inedita*, ed. J. von Pflugk-Harttung (Tübingen, 1881-; rept., Graz, 1958).

Archives de l'Orient latin. *Archives de l'Orient latin* (Société de l'Orient latin: Paris, 1881-).

Archives historiques du Poitou. *Archives historiques du Poitou* (Société des archives historiques du Poitou: Poitiers, 1872-).

Bambergensia. *Epistolae Bambergenses, Monumenta Bambergensia*, ed. P. Jaffé (*Bibliotheca rerum Germanicarum* 5: Berlin, 1864-; rept., 1964), 470-536.

Bernard of Clairvaux, *Letters*. Bernard of Clairvuax, *Sancti Bernardi opera* 7-8: *Epistolae*, ed. J. Leclercq and H.M. Rochais (Cistercian Edition: Rome, 1957-); *Epistolae*, *PL* 182, col. 67-662; *The Letters of Bernard of Clairvaux*, trans. B.S. James (Surrey, 1998). Citations refer to the Cistercian edition, with that of B.S. James in parentheses.

Cartulaire de l'abbaye de Saint-Victor de Marseille. *Collection des cartulaires de France* 8-9: *Cartulaire de l'abbaye de Saint-Victor de Marseille*, ed. B.E.C. Guérard (Collection de documents inédits sur l'histoire de France 1: Histoire politique: Paris, 1840-).

Cartulaire de l'église Notre-Dame de Paris. *Collection des cartulaires de France* 4-7: *Cartulaire de l'église Notre-Dame de Paris*, ed. B.E.C. Guérard (Collection de documents inédits sur l'histoire de France 1: Histoire politique: Paris, 1840-).

Chronica S. Bertini. *Chronica monasterii S. Bertini auctore Iohanne Longo de Ipra*, *MGH SS* 25, 736-866.

Chronicon monasterii de Abingdon. *Chronicon monasterii de Abingdon*, ed. J. Stevenson (*Rerum Britannicarum medii aevi scriptores* 2: London, 1858).

Collectio Alani. Rudolf von Heckel, 'Die Dekretalensammlungen des Gilberts und Alanus nach den Weingartener Handschriften,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 29 (1940), 116-357.

Collectio Lipsiensis. *Collectio Lipsiensis, Quinque compilationes antiquae: Necnon collectio canonum Lipsiensis*, ed. E. Friedberg (Leipzig, 1882; rept., Graz, 1956), 189-208.

Compilatio secunda. *Compilatio secunda*, *Quinque compilationes antiquae: Necnon collectio canonum Lipsiensis*, ed. E. Friedberg (Leipzig, 1882; rept., Graz, 1956), 66-104.

Compilatio tertia. *Compilatio tertia*, *Quinque compilationes antiquae: Necnon collectio canonum Lipsiensis*, ed. E. Friedberg (Leipzig, 1882; rept., Graz, 1956), 105-34.

Constitutiones. *Constitutiones et acta publica imperatorum et regum* 1: *911-1171*, ed. L. Weiland (*MGH: Leges* 4: Hannover, 1893-).

De Consideratione. Bernard of Clairvaux, *Sancti Bernardi opera* 3: *De consideratione ad Eugenium papam*, ed. J. Leclercq and H.M. Rochais (Cistercian Edition: Rome, 1957-); *De consideratione ad Eugenium papam*, *PL* 182, col. 727-808; *Five Books on Consideration*, trans. J.D. Anderson and E.T. Kennan (Cistercian Fathers 13: Kalamazoo, 1976). Citations refer to the divisional structure—under book, section (Roman), and paragraph (Arabic) numbers—of the Cistercian edition, followed in parentheses by the page number of Anderson and Kennan.

Decretales, Gregory IX. *Decretalium D. Gregorii papae IX compilatio*, *Corpus iuris canonici* 2: *Decretalium collectiones*, ed. E. Friedberg (Leipzig, 1879; rept., Graz, 1959), 1-928.

Ecumenical Councils. *Decrees of the Ecumenical Councils*, ed. N.P. Tanner, original text by G. Alberigo et al. (London, 1990).

EPRI. *Epistolae pontificum Romanorum ineditae*, ed. S. Löwenfeld (Leipzig, 1885; rept., Graz, 1959).

Glanfeuil Forgeries. Herbert Bloch, 'The Schism of Anacletus II and the Glanfeuil Forgeries of Peter the Deacon of Monte Cassino,' *Traditio* 8 (1952), 159-264.

Gratian, *Decretum.* Gratian, *Corpus iuris canonici* 1: *Decretum magistri Gratiani*, ed. E. Friedberg (Leipzig, 1879).

Historiae Tornacenses. *Monumenta historiae Tornacensis: Historiae Tornacenses partim ex Hermanni libris excerptae*, *MGH SS* 14, 327-52.

Historia monasterii S. Augustini Cantuariensis. *Historia monasterii S. Augustini Cantuariensis*, ed. C. Hardwick (*Rerum Britannicarum medii aevi scriptores* 8: London, 1858).

HP. John of Salisbury, *Historia pontificalis*, ed. M. Chibnall, *Memoirs of the Papal Court* (London, 1956).

IP. *Italia pontificia sive repertorium privilegiorum et litterarum a Romanis pontificibus ante annum MCLXXXXVIII Italiae ecclesiis, monasteriis, civitatibus, singulisque personis concessorum*, ed. P.F. Kehr et al. (Berlin, 1906-; rept., 1961-). '*'=not an extant letter, but '*laudatum*' in a later papal document or other contemporary source, chronicle, annal, etc.

JL. *Regesta pontificum Romanorum*, ed. P. Jaffé, 2nd edition, ed. S. Löwenfeld et al., under the direction of W. Wattenbach (Leipzig, 1885-; rept., Graz, 1957).

Kanonistische Ergänzungen zur *Italia pontificia.* 'Kanonistische Ergänzungen zur *Italia pontificia* 1-4,' ed. W. Holtzmann, *Quellen und Forschungen aus Italienischen Archiven und Bibliotheken* 37 (1957), 55-102; 'Kanonistische Ergänzungen zur *Italia pontificia* 5-10,' ed. W. Holtzmann, *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 38 (1958), 67-175.

LC. *Le* Liber Censuum *de l'église romaine* 1, ed. P. Fabre and L. Duchesne (Bibliothèque des Écoles françaises d'Athènes et de Rome 2/6: Paris, 1889-).

Le bolle pontificie, Montecassino. 'Le bolle pontificie anteriori al 1198 che si conservano nell'archivio di Montecassino,' ed. P.F. Kehr, *Miscellanea Cassinese* 2 (1899), 1-90.

LP. *Le* Liber pontificalis*: texte, introduction et commentaire* 2, ed. L. Duchesne (Bibliothèque des Écoles

françaises d'Athènes et de Rome 2/3: Paris, 1886-; rept., 1955).

Mansi. *Sacrorum conciliorum nova, et amplissima collectio*, ed. G.D. Mansi (Paris, 1901-).

MGH. *Monumenta Germaniae historica.*
SS. *Scriptores.*

MGH Libelli de lite. *MGH: Libelli de lite imperatorum et pontificum saeculis XI. et XII. conscripti*, ed. E. Dümmler and L. von Heineman (Hannover, 1891-).

MGH SS. *MGH: Scriptores* (in folio), ed. G.H. Pertz et al. (Hannover, 1826-).

Nachträge zu den PU in Italiens 2. 'Nachträge zu den Papsturkunden in Italiens 2,' ed. P.F. Kehr, *NKGWG* (1908). 223-304.

Nachträge zu den PU in Italiens 4. 'Nachträge zu den Papsturkunden in Italiens 4,' ed. P.F. Kehr, *NKGWG* (1910), 229-88.

Nachträge zu den PU in Italiens 5. 'Nachträge zu den Papsturkunden in Italiens 5,' ed. P.F. Kehr, *NKGWG* (1911), 267-335.

Nachträge zu den PU in Italiens 8. 'Nachträge zu den Papsturkunden in Italiens 8,' ed. P.F. Kehr, *NKGWG* (1914), 52-92.

Nachträge zu den PU in Italiens 9. 'Nachträge zu den Papsturkunden in Italiens 9,' ed. P.F. Kehr, *NKGWG* (1925), 156-93.

Nachträge zu den römischen Berichten. 'Nachträge zu den römischen Berichten,' ed. P.F. Kehr, *NKGWG* (1903), 505-91.

NF. Neue Folge.

NKGWG. *Nachrichten von der Königlichen Gesellschaft der Wissenschaften zu Göttingen: Philologisch-historische Klasse.*

Otto of Freising, *Gesta.* Otto of Freising, and his continuator, Rahewin, *Ottonis et Rahewinis gesta Friderici I. Imperatoris*, ed. G. Waitz and B. von Simson (*MGH SS rerum Germanicarum in usum scholarum* 46: Hannover, 1912); *The Deeds of Frederick Barbarossa*, trans. C.C. Mierow (New York, 1953). Citations refer to the page number, unless otherwise indicated, of Mierow.

Otto of Freising, *Two Cities.* Otto of Freising, *Ottonis episcopi Frisingensis opera ex recensione Rogeri Wilmans* 1: *Chronicon adiecta continuatione*, ed. G.H. Pertz (*MGH SS rerum Germanicarum in usum scholarum*: Hannover, 1867-); *The Two Cities: A Chronicle of Universal History to the Year 1146 A.D.*, trans. C.C. Mierow, ed. A.P. Evans and C. Knapp (New York, 1928).

Peter the Venerable, *Letters.* Peter the Venerable, *The Letters of Peter the Venerable*, ed. G. Constable (Cambridge, Mass., 1967); *Petri Venerabilis epistolarum libri sex*, *PL* 189, col. 61-472. Primary citations refer to edition of G. Constable.

P-H *Iter.* *Iter Italicum*, ed. J. von Pflugk-Harttung (Stuttgart, 1883; rept., Turin, 1967).

PL. *Patrologiae cursus completus: Series latina*, ed. J.P. Migne (Paris, 1844-).

PL, Adrian IV. Pope Adrian IV, *Adriani IV pontificis epistolae et privilegia*, *PL* 188, col. 1361-1640.

PL, Alexander III. Pope Alexander III, *Alexandri III pontificis Romani epistolae et privilegia ordine chronologico digesta (Anno 1159-1181)*, *PL* 200, col. 69-1320.

PL, Calixtus II. Pope Calixtus II, *Calixti II pontificis Romani epistolae et privilegia*, *PL* 163, col. 1093-

1338.

PL, Celestine II. Pope Celestine II, *Coelestini II pontificis Romani epistolae et privilegia*, *PL* 179, col. 765-820.

PL, Celestine III. Pope Celestine III, *Coelestini III pontificis Romani epistolae et privilegia ordine chronologico digesta*, *PL* 206, col. 867-1248.

PL, Eugene III. Pope Eugene III, *Eugenii III pontificis Romani epistolae et privilegia*, *PL* 180, col. 1013-1641.

PL, Gregory VIII. Pope Gregory VIII, *Gregorii VIII pontificis Romani epistolae et privilegia*, *PL* 202, col. 1537-64.

PL, Honorius II. Pope Honorius II, *Honorii II pontificis Romani epistolae et privilegia*, *PL* 166, col. 1217-1316.

PL, Innocent II. Pope Innocent II, *Innocentii II pontificis Romani epistolae et privilegia*, *PL* 179, col. 53-658.

PL, Lucius II. Pope Lucius II, *Lucii II pontificis Romani epistolae et privilegia*, *PL* 179, col. 823-936.

PL, Paschal II. Pope Paschal II, *Paschalis II pontificis Romani epistolae et privilegia*, *PL* 163, col. 31-447.

PL, Urban II. Pope Urban II, *Beati Urbani II pontificis Romani epistolae et privilegia*, *PL* 151, col. 283-552.

PU. Papsturkunden.

PU des Nordens. 'Papsturkunden des Nordens, Nord- und Mittel-Deutschlands Bericht der Wedekindschen Preisstiftung für Deutsche Geschichte,' ed. A. Brackmann, *NKGWG* (1904), 1-45.

PUE1. *Papsturkunden in England* 1: *Bibliotheken und Archive in London* 2: *Texte*, ed. W. Holtzmann (AGWG: NF 25/1: Berlin, 1930).

PUE2. *Papsturkunden in England* 2: *Die kirchlichen Archive und Bilbliotheken* 2: *Texte*, ed. W. Holtzmann (AGWG: DF 15: Berlin, 1936).

PUE3. *Papsturkunden in England* 3: *Oxford, Cambridge, kleinere Bibliotheken und Archive und Nachträge aus London*, ed. W. Holtzmann (AAWG: DF 33: Göttingen, 1952).

PUF1. *Papsturkunden in Frankreich: NF* 1/*Anhang: Champagne und Lothringen: Urkunden und Regesten*, ed. H. Meinert (AGWG: DF 3-4: Berlin, 1932-).

PUF1, Nach. Gott. 'Papsturkunden in Frankreich 1: Franche-Comté,' ed. W. Wiederhold, *NKGWG* (1906), Beiheft: 1-145.

PUF2. *Papsturkunden in Frankreich: NF* 2: *Normandie*, ed. J. Ramachers (AGWG: DF 21: Göttingen, 1937).

PUF2, Nach. Gott. 'Papsturkunden in Frankreich 2: Burgund mit Bresse und Bugey,' ed. W. Wiederhold, *NKGWG* (1906), Beiheft: 1-98.

PUF3. *Papsturkunden in Frankreich: NF* 3: *Artois*, ed. J. Ramachers (AGWG: DF 23: Göttingen, 1940).

PUF3, Nach. Gott. 'Papsturkunden in Frankreich 3: Dauphiné, Savoyen, Lyonnais und Vivarais,' ed. W. Wiederhold, *NKGWG* (1907), Beiheft: 1-37.

PUF4. *Papsturkunden in Frankreich: NF* 4: *Picardie*, ed. J. Ramachers (AAWG: DF 27: Göttingen, 1942).

PUF4, Nach. Gott. 'Papsturkunden in Frankreich 4: Provence mit Venaissin, Uzegois, Alais, Nemosez und Nizza,' ed. W. Wiederhold, *NKGWG* (1907), Beiheft: 38-172.

PUF5. *Papsturkunden in Frankreich: NF* 5: *Touraine, Anjou, Maine und Bretagne*, ed. J. Ramachers (AAWG: DF 35: Göttingen, 1956).

PUF5, Nach. Gott. 'Papsturkunden in Frankreich 5: Berry, Bourbonnais, Nivernais und Auxerrois,' ed. W. Wiederhold, *NKGWG* (1910), Beiheft: 1-179.

PUF6. *Papsturkunden in Frankreich: NF* 6: *Orléanais*, ed. J. Ramackers (AAWG: DF 41: Göttingen, 1958).

PUF6, Nach. Gott. 'Papsturkunden in Frankreich 6: Auvergne, Poitou, Périgord, Angoumois, Saintonge, Marche und Limousin,' ed. W. Wiederhold, *NKGWG* (1911), Beiheft: 1-112.

PUF7. *Papsturkunden in Frankreich: NF* 7: *Nördliche Ile-de-France und Vermandois*, ed. D. Lohrmann (AAWG: DF 95: Göttingen, 1976).

PUF7, Nach. Gott. 'Papsturkunden in Frankreich 7: Gascogne, Guienne und Languedoc,' ed. W. Wiederhold, *NKGWG* (1913), Beiheft: 1-201.

PUF8. *Papsturkunden in Frankreich: NF* 8: *Diözese Paris* 1: *Urkunden und Briefsammlungen der Abteien Sainte-Geneviève und Saint-Victor*, ed. D. Lohrmann and G. Teske (AAWG: DF 174: Göttingen, 1989).

PUF9. *Papsturkunden in Frankreich: NF* 9: *Diözese Paris* 2: *Abtei Saint-Denis*, ed. R. Grosse (AAWG: DF 225: Göttingen, 1998).

PU im ehemaligen *Patrimonium*. 'Papsturkunden im ehemaligen *Patrimonium* und im südlichen Toscona,' ed. P.F. Kehr, *NKGWG* (1901), 196-228.

PU im westlichen Toscana. 'Papsturkunden im westlichen Toscana,' ed. P.F. Kehr, *NKGWG* (1903), 592-641.

PU in Campanien. 'Papsturkunden in Campanien,' ed. P.F. Kehr, *NKGWG* (1900), 286-344.

PU in den Abruzzen. 'Papsturkunden in den Abruzzen und am Monte Gargano: Bericht über die Reise der DDr. M. Klinkenborg und L. Schiaparelli,' ed. P.F. Kehr, *NKGWG* (1898), 290-334.

PU in Florenz. 'Papsturkunden in Florenz,' ed. W. Wiederhold, *NKGWG* (1901), 306-25.

PU in Ligurien. 'Papsturkunden in Ligurien: Bericht über die Forschungen von L. Schiaparelli,' ed. P.F. Kehr, *NKGWG* (1902), 169-92.

PU in Mailand. 'Papsturkunden in Mailand,' ed. P.F. Kehr, *NKGWG* (1902), 67-129.

PU in Malta. 'Papsturkunden in Malta: Bericht über die Forschungen von L. Schiaparelli,' ed. P.F. Kehr, *NKGWG* (1899), 369-409.

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[1] The following document numbers are those used by J.P. Migne. The list also includes all privileges of protection cited throughout the following chapters and appendices.

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307, col. 1354-55 (JL, 9275).
308, col. 1355-56 (JL, 9277).
311, col. 1358 (JL, 9281).
314, col. 1361 (JL, 9284).
316, col. 1363 (JL, 9291).
317, col. 1363-66 (JL, 9293).
318, col. 1366-67 (JL, 9295).
319, col. 1368 (JL, 9296).
320, col. 1368-69 (PUF8, no. 32; JL, 9297).
322, col. 1369 (JL, 9299).
323, col. 1369-70 (JL, 9300).
324, col. 1370-71 (JL, 9301).
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339, col. 1384-85 (JL, 9322).
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341, col. 1385-86 (JL, 9325).
342, col. 1386 (JL, 9328).
343, col. 1386 (JL, 9330).
344, col. 1387 (JL, 9331).
346, col. 1390 (JL, 9335).
347, col. 1390 (JL, 9336).
348, col. 1390-91 (JL, 9337).
349, col. 1391 (JL, 9339).
350, col. 1391 (JL, 9340).
351, col. 1391-92 (JL, 9341).
352, col. 1392 (JL, 9342).
353, col. 1392-93 (JL, 9343).
354, col. 1393-94 (Otto of Freising, *Gesta*, 106-08; JL, 9344).
355, col. 1394-95 (JL, 9345).
356, col. 1395-96 (JL, 9346).
357, col. 1396 (JL, 9347).
358, col. 1396-97 (JL, 9348).

359, col. 1397 (JL, 9349).
360, col. 1397-98 (JL, 9350).
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362, col. 1398-99 (JL, 9352).
363, col. 1399-1400 (JL, 9353).
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372, col. 1406 (JL, 9364).
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374, col. 1407 (JL, 9366).
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376, col. 1408-09 (JL, 9369).
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396, col. 1422-23 (*APRI* 2, no. 397; JL, 9405).
398, col. 1423 (JL, 9407).
399, col. 1423-24 (JL, 9408).
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428, col. 1455-56 (JL, 9452).
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430, col. 1457 (JL, 9454).
431, col. 1457-58 (JL, 9455).
432, col. 1458-59 (JL, 9456).
433, col. 1459 (JL, 9457; see, *HP*, 70).
434, col. 1460 (JL, 9458).
435, col. 1460 (JL, 9459; see, *HP*, 70).
436, col. 1460-62 (JL, 9461).
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442, col. 1469 (JL, 9471).
443, col. 1469 (JL, 9472).
444, col. 1470 (JL, 9473).
445, col. 1470-71 ('Nachträge zu den Papsturkunden in Italiens 6,' ed. P.F. Kehr, *NKGWG* [1912], 321-83, here at, no. 11; *IP* 6/1, 152/2; JL, 9474).
447, col. 1472-73 (JL, 9482).
449, col. 1474-75 (JL, 9486).
450, col. 1475-76 (JL, 9487).
451, col. 1476-77 (JL, 9489).
452, col. 1477-78 (JL, 9490).
453, col. 1478 (JL, 9491).
455, col. 1480 (*APRI* 1, no. 224; JL, 9495).
457, col. 1482-83 (JL, 9502).
458, col. 1483-84 (JL, 9536).
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460, col. 1484-85 (JL, 9414).
461, col. 1485 (JL, 9505).
462, col. 1485-86 (JL, 9507).
463/545, col. 1486/1564-65 (*Decretales*, Gregory IX, Bk. 5. XVII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4; JL, 9508/9656).
464, col. 1486-88 (JL, 9515).
465, col. 1488-89 (JL, 9516).
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491, col. 1508-09 (JL, 9551).
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498, col. 1515-17 (JL, 9558).
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503, col. 1522 (JL, 9573).
504, col. 1522-23 (JL, 9577).
505, col. 1523-24 (JL, 9579).
506, col. 1524 (JL, 9580).
507, col. 1524-25 (JL, 9581).
509, col. 1527-29 (JL, 9584).
510, col. 1529-32 (JL, 9585).
511, col. 1532-33 (JL, 9587).
512, col. 1533-36 (JL, 9589).
513, col. 1536-37 (JL, 9590).
514, col. 1537-38 (JL, 9592).
516, col. 1539 (PUS1, no. 70 [9/24/53-54]: 'Der Text wiederholt das Breve Eugens III. vom 22. Juni 1152 JL. 9594 [*PL*, Eugene III, no. 516];' JL, 9594).
517, col. 1539-40 (JL, 9596).
518, col. 1540 (JL, 9597).
519, col. 1540-41 (JL, 9598).
520, col. 1541 (JL, 9599).
521, col. 1541-43 (JL, 9600).
522, col. 1543 (JL, 9602).
523, col. 1544-45 (Otto of Freising, *Gesta*, 120-22; JL, 9605).
524, col. 1545-46 (JL, 9606).
525, col. 1546-47 (JL, 9607).
527, col. 1550 (JL, 9610).
528, col. 1550-51 (JL, 9619).
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530, col. 1551-52 (JL, 9623).
531, col. 1553 (JL, 9627).
532, col. 1553-54 (JL, 9628).
533, col. 1554-55 (JL, 9629).
534, col. 1555 (*Decretales*, Gregory IX, Bk. 2. VII. 4; JL, 9653).
535, col. 1555-57 (JL, 9630).
536, col. 1557-59 (JL, 9631).
537, col. 1559 (JL, 9641).
539, col. 1561-62 (PUN, no. 66; JL, 9157).
540, col. 1562-63 (JL, 9646).
541, col. 1563 (*IP* 8, 180/258; JL, 9647).
542, col. 1564 (JL, 9649).
543, col. 1564 (*Decretales*, Gregory IX, Bk. 2. VII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 67; *IP* 5, 251/25, 181/6; JL, 9654).
544, col. 1564 (*Decretales*, Gregory IX, Bk. 4. I. 3; JL, 9655).
546, col. 1565 (*Decretales*, Gregory IX, Bk. 2. XX. 5; JL, 9657).
547, col. 1565-66 (PUF8, no. 41; JL, 9661).
548, col. 1566-67 (JL, 9662).
549, col. 1567 (JL, 9666).
550, col. 1567 (JL, 9667).
551, col. 1567-68 (JL, 9671).
552, col. 1568 (JL, 9675).
553, col. 1568-70 (JL, 9676).
554, col. 1570-71 (JL, 9677).
555, col. 1571-72 (PUF9, no. 45; JL, 9678).
556, col. 1572-75 (JL, 9683).
557, col. 1575 (JL, 9684).
558, col. 1575-78 (JL, 9686).
559, col. 1578 (JL, 9687).
560, col. 1579-80 (JL, 9688).
561, col. 1580 (JL, 9689).
562, col. 1580-81 (JL, 9690).
563, col. 1581-82 (JL, 9691).
564, col. 1582 (JL, 9692).
565, col. 1583 (JL, 9693).
566, col. 1583-84 (JL, 9694).
568, col. 1584 (JL, 9696).
569, col. 1584-85 (JL, 9697).
570/71, col. 1585-86 (JL, 9702).
574, col. 1587 (JL, 9707).
575, col. 1587-88 (JL, 9710).
577, col. 1588-91 (JL, 9714).
578, col. 1591-93 (JL, 9718).
579, col. 1593 (JL, 9720).
580, col. 1594 (JL, 9721).
581, col. 1594-97 (JL, 9724).
582, col. 1597-99 (JL, 9725).
583, col. 1599-1600 (*IP* 3, 251/1; JL, 9726/9727).
584, col. 1600-01 (JL, 9728).
585, col. 1601-03 (JL, 9729).
587, col. 1604-05 (*APRI* 3, no. 113; JL, 9731).
588, col. 1605-06 (JL, 9734).
589, col. 1606 (JL, 9735).
591, col. 1609-11 (JL, 9199).
592, col. 1611-14 (JL, 9618).

INTRODUCTION

This thesis concerns the prominent aspects of papal and curial authority and practice as they are reflected through the papal letters of the period 1143-53. As R.W. Southern noted, the main instruments of papal 'policy' in the central Middle Ages were councils, legates, and letters, with letters 'the most important instrument for the daily conduct of business.'[1] Similarly, this thesis is primarily concerned with the daily routine of papal, or curial, business, and the concomitant questions of how the pope's authority was expressed and exercised within, and at the same time received and utilised by, the Church. As such, the ensuing chapters will attempt an inductive and quasi-statistical analysis of those papal letters in the effort to address these questions as they pertain to the mid-twelfth century, as well as to define, if not these popes' own vision of the mission and role of the papal office and curia in the same period, their practice and actual governance of churches and churchmen. More specifically, as clearly the most salient aspect of papal authority and practice, and as a subject-matter for this period left almost entirely unstudied by historians, the following thesis attempts to explore and understand the nature of the systems of papal justice.

In general, relatively little has been written concerning the papacy or curia in the decade 1143-53; while most of what has been written has been concerned with papal political history or else the Second Crusade. H. Gleber's older biography of Eugene III (1936)[2] was intended as a political and narrative history of the pope and has been replaced by M. Horn's more recent biography (1992).[3] And while Horn's narrative itself is sound and admirably researched, the nature of the work determined that it remain somewhat cursory, if not arbitrary with regard to the papacy and the churches, with very little to offer about the actual workings of the curia or its everyday business. In any event, as a biography it approached the subject on a far different level than the present study. Before these, the largely political narratives of F. Gregorovius (1872)[4] and H.K. Mann (1914),[5] though in many regards outdated, provided some still useful information and source references. Otherwise, I.S. Robinson's (1990)[6] impressive work on the papacy in the late eleventh and twelfth centuries has provided a solid modern synthesis of the political history in this

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[1] R.W. Southern, *Western Society and the Church in the Middle Ages* (London, 1990), 107-08.

[2] H. Gleber, *Papst Eugen III. (1145-53) unter besonderer Berücksichtignung seiner politischen Tätigkeit* (Beiträge zur mittelalterlichen und neueren Geschichte 6: Jena, 1936).

[3] M. Horn, *Studien zur Geschichte Papst Eugens III. (1143-53)* (Frankfort, 1992).

[4] F. Gregorovius, *History of Rome in the Middle Ages* 4/2, trans. A. Hamilton (London, 1896), 442-562.

[5] H.K. Mann, *The Lives of the Popes in the Middle Ages* 9, 2nd edition (London, 1925), 67-313.

[6] I.S. Robinson, *The Papacy, 1073-1198: Continuity and Innovation* (Cambridge, 1990), 3-32, 293-524.

period, and elsewhere provided a much needed, if necessarily cursory, analysis of some of the non-political aspects of the curia. For Eugene III's immediate successors we at least now have a recent collection (2003) of articles on Adrian IV which has helped to establish his background and also several important aspects of his own temporal 'policy.'[1] Otherwise, there is not much available, especially in English, on the papal Patrimony in the middle decades of the twelfth century,[2] and even less on the communes of central and northern Italy, especially of a political nature.[3] Rather more in fact has been devoted over the years to the somewhat popular subject of Arnold of Brescia.[4] The literature is perhaps richest on southern Italy and the Normans;[5] while for Germany

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[1] *Adrian IV, the English Pope (1154-1159): Studies and Texts*, ed. B. Bolton and A.J. Duggan (Ashgate, 2003); see esp., B. Bolton, '*Nova familia beati Petri*: Adrian IV and the Patrimony,' 157-78; A.J. Duggan, '*Totius christianitatis caput*: The Pope and the Princes,' 105-55. P. Classen, 'Zur Geschichte Papst Anastasius' IV.,' *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 48 (1968), 36-63, said virtually nothing about Anastasius' actual pontificate, as he was concerned only with that pope's background. For Adrian IV, the old and uncritical work of E.M. Almidingen, *The English Pope (Adrian IV)* (London, 1925), 151-73, said almost nothing on Adrian as pope. For Adrian's imperial relations there are the more recent works of M. Maccarrone, *Papato ed impero: Dalla elezione di Frederico I alla morte di Adriano IV, 1152-1159* (*Lateranum*, n.s. 25/1-4: Rome, 1959); and W. Ullmann, 'The Pontificate of Adrian IV,' *Cambridge Historical Journal* 11 (1953-55), 233-52, and 'Cardinal Roland and Besançon,' *Miscellanea historiae pontificiae* 18 (1954), 107-25.

[2] There is some useful information in P. Partner's (1972) broad history, *The Lands of St. Peter* (Berkeley, 1972), esp. 172-205, and in R.L. Benson's (1982) article, 'Political *renovatio*: Two Models from Antiquity,' *Renaissance and Renewal in the Twelfth Century*, ed. R.L. Benson and G. Constable, with C.D. Lanham (Cambridge, Mass., 1982), 339-86. The massive work of P. Toubert (1973), *Les structures du Latium médiéval: Le Latium méridional et la Sabine du IXe siècle è la fin du XIIe siècle* (Bibliothèque des Écoles françaises d'Athènes et de Rome 221: Rome, 1973), was not written as an ecclesiastical or even political history, and focused instead on the social and economic history of southern Latium and the Sabina over a broad course of time. L. Halphen's *Études sur l'adminstration de Rome au moyen âge* (751-1252) (Paris, 1907), is very old, very broad in scope, and yet extremely short, and not concerned with the papacy *per se* but rather the communal government; see, for the period in question here, 53-69, 101, 112, 121, 128, 138, 144-45, 153, 157-58, 162-64. See also, D. Waley, *The Papal State in the Thirteenth Century* (New York, 1961), esp. 10-11. For a cursory background to the financial organisation of the curia, see, F. Geisthardt, *Der Kämmerer Boso* (Historische Studien 293: Berlin, 1936), 7-86; K. Jordan, 'Zur päpstlichen Finanzgeschichte im 11. und. 12. Janhrhundert,' *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 25 (1933-34), 61-104, who said very little about the mid-twelfth century; and J. Sydow, 'Cluny und die Anfänge der apostolischen Kammer: Studien zur Geschichte der päpstlichen Finanzverwaltung um 11. und 12. Jahrhundert,' *Studien und Mitteilungen zur Geschichte des Benediktinerordens und seiner Zweige* 63 (1951), 45-66.

[3] See, J.K. Hyde, *Society and Politics in Medieval Italy: The Evolution of Civil Life, 1000-1350* (New York, 1973), esp. 1-104, who was not really concerned with the papacy but provided a good background to the nature of Italian communes; W.F. Butler, *The Lombard Communes: A History of the Republics of North Italy* (London, 1906), 50-118, is an old and rather poor source.

[4] See, e.g., G.W. Greenaway, *Arnold of Brescia* (Cambridge, 1931), which was superceded by A. Frugoni, *Arnaldo da Brescia nella fonti del Secolo XII.* (Istituto storico italiano per il Medio Evo: Studi storici 8-9: Rome, 1954).

[5] See, E.L.E. Caspar, *Roger II. (1101-1154) und die Gründung der normannisch-sicilischen Monarchie* (Innsbruck, 1904; rept., Darmstadt, 1963), esp. 132-434; F. Chalandon, *Histoire de la domination normande en Italie et en Sicile* 2 (Paris, 1907; rept., New York, 1960), esp. 52-261; E. Curtis, *Roger of Sicily and the Normans in Lower Italy, 1016-1154* (New York, 1912), esp. 171-459; E. Jamison, 'The Norman

and the Hohenstaufen, for Conrad III, W. Bernhardi (1883)[1] has still not been replaced, although far more has been written on Frederick I.[2] Lastly, the literature on the Second Crusade has grown somewhat considerably over the last several years, especially in two collections of articles (1992 and 2001).[3]

Overall there is not a wealth of literature on the pope and curia, and essentially nothing in depth on papal relations with the Church, in the particular historical span 1143-53—that is, beginning with the brief and thus relatively neglected pontificates of Celestine II and Lucius II, after the long and tumultuous pontificate of Innocent II, and ending with the death of Lucius' successor Eugene III—despite this decade's particular significance. To begin with, the period was significant simply by virtue of the fact that it was a post-Innocentine papacy, and no longer encumbered by the circumstances of the schism of 1130 and the influence of Innocent's chancellor Cardinal-deacon Haimeric of S. Maria nuova (1123-41). More importantly, after roughly five years of mending of damage wrought by that schism, stability had largely been brought back to the Church. At the same time, the period from 1143 until the outbreak of another and substantially longer schism in 1159, and concomitant war with the emperor, witnessed one of the rare if relatively fleeting stints of peace and stability in the Church and papacy since the beginning of the early reform period. The same fact was not lost on contemporaries themselves, insofar as it was noted that the election of Celestine II in late September 1143 was the first wholly harmonious papal election in nearly a century.[4] At the same time, however, while the pope's primacy was basically recognised throughout all of the ecclesiastical provinces of the Western Church, a violent communal revolution on the eve of Innocent II's death ultimately drove the curia out of Rome

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Administration of Apulia and Capua: More Especially under Roger II and William I, 1127-66,' *Papers of the British School at Rome* 6/6 (London, 1913), 211-481, esp. 251-62; H. Wieruszowski, 'Roger II of Sicily, *rex-tyrannus*, in Twelfth-Century Political Thought,' *Speculum* 38 (1963), 46-78; H. Houben, *Roger II of Sicily: A Ruler between East and West*, trans. G.A. Loud and D. Milburn (Cambridge, 2002); also, J.J. Norwich, *The Kingdom in the Sun, 1130-1194* (London, 1970); D. Matthew, *The Norman Kingdom of Sicily* (Cambridge, 1992).

[1] W. Bernhardi, *Konrad III* (Leipzig, 1883).

[2] See, e.g., U. Balzani, *The Popes and the Hohenstaufen* (New York, 1901), esp. 1-53; P. Rassow, Honor imperii: *Die neue Politik Friedrich Barbarossas, 1152-1159* (Munich, 1961); P. Munz, *Frederick Barbarossa* (London, 1969); M. Pacaut, *Frederick Barbarossa*, trans. A.J. Pomerans (New York, 1970).

[3] *The Second Crusade and the Cistercians*, ed. M. Gervers (New York, 1992); *The Second Crusade: Scope and Consequences*, ed. J. Phillips and M. Hoch (Manchester, 2001); see also, S. Runciman, *A History of the Crusades* 2 (London, 1951-), esp. 222-87; G. Constable, 'The Second Crusade as Seen by Contemporaries,' *Religious Life and Thought (Eleventh-Twelfth Centuries)* (London, 1979), 213-79; J.C. Rowe, 'The Papacy and the Greeks (1122-1153)' 1-2, *Church History* 28 (June, 1959), 115-30, *Church History* 28 (Sept., 1959), 310-27.

[4] See, Peter the Venerable, *Letters*, 299-301, no. 112 (*PL* 189, Bk. 4. XVIII, col. 344-4); *The Letters of Arnulf of Lisieux*, ed. F. Barlow (London, 1939), no. 2; *Annales Cavenses*, *MGH SS* 3, 192; see also, H.K. Mann, *Lives* 9, 102-03, 103 n. 1.

itself, and kept it out for most of the period under discussion here, forcing the pope on several occasions to wield his material sword against his own episcopal see, and significantly affecting the papacy's diplomatic relations with the crowns of German and Sicily.

Furthermore, most of the major figures within the curia associated with the eighteen-year schism of 1159—which began with the contested election of Alexander III and ended with the Peace of Venice in 1177—either entered or rose within the cardinalate under Celestine II, Lucius II, or Eugene III, including six eventual popes[1] and two antipopes.[2] For the popes themselves who sat during the period 1143-53, the Tuscan Celestine II, as Guido de Castello (Città di Castello), was a secular cleric who first entered the college under Honorius II as cardinal-deacon of S. Maria in Via Lata (1128-33) and was promoted by Innocent II as cardinal-priest of S. Marco (1133-43). He appears to have been the first *magister*, or lawyer, promoted to the college, and was previously a pupil of Abelard in France, to whom he remained loyal, and was held in his own right as one of the most learned men of his age—he was said to have possessed a library of more than fifty volumes, including many books on canon and Roman Law. As a cardinal he was assigned the task to persuade King Roger II of Sicily to change sides in the schism of 1130; and in 1137 he was a member of a delegation sent to Monte Cassino by Innocent II to investigate the legality of the election of its abbot. And in the final years of Innocent's pontificate he is thought to have been a close collaborator in curial business of the papal chancellor Cardinal Gerard, the future Lucius II. Guido was elected pope on 26 September 1143 in the midst communal revolution and died within half a year on 8 March 1144.[3]

Lucius II, as Gerard Cacciaminici, was from Bologna. He entered the Roman Church as a canon of St. John Lateran; and it has been suggested that he was one of a group of canons regular brought from S. Frediano, Lucca by Calixtus II to reform the canons of St. John Lateran. According to his papal biographer, the future chamberlain and cardinal, Boso, Gerard was 'taken in by Honorius II and ordained cardinal-priest of the title S. Croce [in Gerusalemme (1123-44)].' Innocent II then 'drew this celebrated man more closely to him on account of his learning and his life of service and appointed him chancellor of the apostolic see,[4] and also, on his death, he

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[1] Celestine II, Anastasius IV, Adrian IV, Alexander III, Lucius III, and Celestine III.
[2] Victor IV and Paschal III.
[3] See, *LP*, 327, 385; *PL*, Celestine II, no. 2; *Mauriniacensis monasterii chronicon*, *PL* 180, Bk. 3, col. 173; Otto of Freising, *Two Cities*, Bk. 7. XXVII. 327-28; *HP*, 85; Bernard of Clairvaux, *Letters*, no. 192, 526 (B.S. James, no. 240, 190); Romuald of Salerno, *Chronicon*, *RIS*² 7/1, 227; *Annales Ceccanenses*, 283; *Annales Casinenses*, 310; Roger of Wendover, *Roger of Wendover's Flowers of History* 1, trans. J.A. Giles (London, 1849), 496; B. Zenker, *Die Mitglieder des Kardinalkollegiums von 1130 bis 1159* (Dissertation: Würzburg, 1964), 83-84; H.K. Mann, *Lives* 9, 102-07; I.S. Robinson, *Papacy*, 106, 147, 220-21; A. Wilmart, 'Les livres légués par Célestin II à Città di Castello,' *Revue bénédictine* 35 (1923), 98-102; D. Luscombe, *The School of Peter Abelard: The Influence of Abelard's Thought in the Early Scholastic Period* (Cambridge, 1969), 20-22.
[4] He subscribed all papal documents in this capacity as '*bibliothecarius* of the Roman Church.'

entrusted the goods of the Church to him as the principal and most worthy member of the Church.' Gerard remained papal chancellor under Celestine II and for two decades was the curia's expert on German affairs: he served Honorius II on two German legations in 1125 and 1126-27, negotiating an alliance between the papacy and Lothar III of Germany. He served four further legations to Germany under Innocent II, furthering Innocent's cause in that kingdom in the context of the schism and enlisting Lothar's aid in reinstating Innocent in Rome itself. And strange for the twelfth century, an outside observer, in this case Gerhoh of Reichersberg, remembered the cardinal Gerard as a model legate. He was consecrated pope on 12 March 1144 and died on 15 February 1145 at the church of S. Giorgio in Clivo Scauri, whither the curia had fled in retreat after an unsuccessful siege, undertaken principally with Sicilian aid, against the Roman communal government on the Capitol: according to one mid-twelfth century observer, the pope died as the result of a fatal blow to the head suffered in the course of personally leading the assault against the Roman senate.[1]

Eugene III's background is controversial, in no small part because of the inconsistent claims of his medieval biographers. He was probably born at Montemagno, between Lucca and Pisa, possibly of the noble family of Paganelli (Pignatelli) di Montemagno. He was perhaps born Pietro, only later taking the name Bernard after having met Bernard of Clairvaux and taken orders at Clairvaux. Before becoming a Cistercian at Clairvaux, Bernard of Pisa, as he became known—'a man notable for piety and holiness,'[2] according to Otto of Freising—served the important ecclesiastical position of *vicedominus* of the church of Pisa—a kind of major-domo of the bishop.[3] In this post, the future pope purportedly came under the influence of Bernard of Clairvaux around 1130, later following the abbot to Clairvaux on his return from the synod of Pisa in 1135. Around 1139 he was sent with a company of monks from Clairvaux to establish a new Cistercian community near the ancient abbey of Farfa in the papal Patrimony. The community was

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[1] See, *LP*, 385; Romuald of Salerno, *Chronicon*, 227-28; *Annales Casinenses*, 310; *Gotifredi Viterbiensis opera: Pantheon, MGH SS* 22, 260-61; *LP*, 386; Otto of Freising, *Two Cities*, Bk. 7. XXXI. 331-32; Gerhoh of Reichersberg, *De investigatione Antichristi liber I, MGH Libelli de lite* 3, 358; JL 2, 1; *Mauriniacensis monasterii chronicon*, Bk. 3, col. 174; *Annales Ceccanenses*, 283; Falco of Benevento, *Chronicon, Cronisti e scittori sincroni della dominazione normanna nel regno di Puglia e Sicilia* 1, ed. G. Del Re (Naples, 1845-), 250; *Annales Cavenses*, 192; Roger of Wendover, *Flowers of History* 1, 496; Bernard of Clairvaux, *Letters*, no. 219, 525 (B.S. James, no. 293, 189); *PL*, Lucius II, no. 64, 83, 91, 92; JL, 8684; *PL*, Eugene III, no. 1; Mansi 21, 609; *APRI* 3, no. 63 (*IP* 1, 27/17; P-H *Iter*, 238; JL, 8711); *LC*, 330, *LC*, 428, no. 172 (*IP* 1, 191/1; JL, 8710); B. Zenker, *Mitglieder*, 129-31; I.S. Robinson, *Papacy*, 147, 159, 212, 217-20; T. Schmidt, 'Die Kanonikerreform in Rom und Alexander II (1061-1073),' *Studi Gregoriani* 9 (1972), 199-221, here at, 216-21; H.K. Mann, *Lives* 9, 114-15; F. Gregorovius, *History of Rome* 4/2, 487.

[2] Otto of Freising, *Two Cities*, Bk. 7. XXXI. 331-32.

[3] H.K. Mann wrote that the duty of the *vicedominus* (*vidame* in French) seems to have been 'to act as the deputy of the bishop in hearing cases and suits,' as a kind of 'vicar-general.' H.K. Mann, *Lives* 9, 132 n. 1. J.F. Niermeyer defined the *vicedominus* as a '*vidame*, clerk of high rank, permanent deputy of the bishop and administrator of the possessions of his church.' J.F. Niermeyer, *Mediae latinitatis lexicon minus* (Leiden, 1976), def. 2. P. Partner meanwhile defined him simply as a financial official. P. Partner, *Lands*, 190 n. 1.

soon moved by Innocent II to restore another ancient monastery of Trefontane [SS. Vincenzo ed Anastasio *ad Aquas Salvias*] near Rome, where the future Eugene III became abbot. Surprisingly, this mere abbot[1] was elected in the midst of open war between the curia and Roman senate 'unanimously and spontaneously (*ex insperato concorditer*)'[2] by the cardinals on the very day of Lucius II's death at the monastery of S. Cesario in Palatio, on the Via Appia, whither the cardinals had convened to seek Frangipani refuge, fearful it was said, of the senators and *Populus Romanus*. Indeed, upon marching into Rome to undertake the solemnities of consecration, the papal procession was promptly opposed by the armed senate which demanded that, in return for acknowledgement of his election, the pope surrender all papal *regalia* inside and out of the City to the new *patricius* of the senate, Jordan Pierleone, brother of the former antipope, Anacletus II. The pope and curia, in turn, promptly fled Rome *sub rosa* under the darkness of the night, whereby Eugene III was compelled to accept consecration in the nearby monastery of Farfa, and the curia was compelled to conduct all subsequent papal business outside of Rome itself for most of his pontificate, until shortly before Eugene's death on 8 July 1153.[3]

Indeed, the pope, largely with the benefit of Sicilian troops and money, coupled with the looming threat of Frederick I's coronation campaign into central Italy, had at length worn down the Romans sufficiently enough to achieve a kind of working relationship with the senate, which he ultimately recognised, and the moderate faction of the commune, and on 9 December 1152 the pope and curia ceremoniously re-entered Rome.[4] There they remained until the outbreak of schism in 1159, when Alexander III's candidacy was opposed by a series of imperial candidates, or antipopes. Nevertheless, this schism, and subsequent war between the Alexandrine curia and Frederick Barbarossa and his son, Henry VI, had its origins in the Treaty of Mignano in 1139

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[1] While some historians have debated whether Eugene III was ever a cardinal (1140?-45) or not, there is no substantial evidence to suppose that he was in fact a member of the college; see, on this, and on Eugene's background generally, H. Gleber, *Papst Eugens III.*, 8-18, 179-88; M. Horn, *Studien*, 19-45; B. Zenker, *Mitglieder*, 184-87.

[2] *LP*, 386.

[3] See, *LP*, 386-87; Bernard of Clairvaux, *Letters*, no. 184 (B.S. James, no. 227), 237 (B.S. James, no. 315), 243 (B.S. James, no. 319), 343, 344 (see also, B.S. James, 305); Ernaldus Bonaevallis, *Liber Secundus, S. Bernardi abbatis Clarae-Vallensis vita et res gestae libris septem comprehensae*, *PL* 185, ch. 7. XLVIII, col. 296-97; Gaufridus of Clairvaux, *Liber Quartus, S. Bernardi abbatis Clarae-Vallensis vita et res gestae libris septem comprehensae*, *PL* 185, ch. 7. XXXIV, col. 343; *PL*, Eugene III, no. 1; *Chronologica Bernardina*, *PL* 182, col. 64; *Mauriniacensis monasterii chronicon*, Bk. 3, col. 174; Otto of Freising, *Two Cities*, Bk. 7. XXXI. 331-32; *HP*, 59-60; PUS2, no. 46; *Historiae Tornacenses*, 344; *Monumenta historiae Tornacensis: Herimanni liber de restauratione S. Martini Tornacensis: Continuatio*, 326; *IP* 1, 171-74; Romuald of Salerno, *Chronicon*, 228; *Annales Casinenses*, 310; Gerhoh of Reichersberg, *Epistolae*, *PL* 193, no. 17, col. 564-570, here at, col. 568-69; *Andreae Danduli ducis Venetiarum chronica per extensum descripta*, *RIS*^{2} 12/1, 241; Roger of Hoveden, *The Annals of Roger of Hoveden* 1, trans. H.T. Riley (London, 1853), 248-49; Varietà, 400-03, no. 1 (*IP* 1, 173/3; JL, 9604); *Libellus de miraculis Eugenii papae III: Observatio praevia*, *PL* 180, col. 1009.

[4] On this, see, ch. 1.3.

between Innocent II and Roger II of Sicily. And throughout the period 1143-53, following Innocent's death, an orientation began to prevail within curial politics, ultimately resulting in the formation of definite parties within the curia, which preferred to keep the German king at arm's-length as much as possible, without disrupting their relatively peaceful and mutual recognition. This 'policy' proved effective with a less ambitious, or at least less fortunate, king like Conrad III, but it fell apart in the face of his successor's more aggressive designs and successes.

Nevertheless, what has not been sufficiently emphasised is the fact that, against this backdrop, while peace with the empire in the immediate period 1143-53 resulted as much as a mere armistice, the confluence of a cessation of open hostility between pope and the German crown—indeed, the fact that Conrad III proved unable to obtain imperial coronation in his lifetime was in itself significant—and the absence of contending popes during the same decade was not only rare but profoundly significant for the nature of papal government during that time. Thus, though a new communal war began at home, in Rome and its environs, and though the papal orientation to the emperor would become irrevocably distanced, the greater, if only temporary, result was that the curia was now afforded relative freedom of movement to conduct papal business and directly exercise its role in the Church Universal, allowing a sustained glimpse of its office in practice without the fuller onus of the various exigencies of foreign war and schism. What issued was a papacy that was basically conservative but which can not be described as either a 'Gregorian,' 'Bernardine,' 'Reform' or 'Post-Reform' papacy. As will be discussed at length, these constructs all have their own problems. Broadly, the principal concerns of the early reformers were, by 1143, no longer important papal issues in the immediate sense. At the same time, the papacy's own self-expression of its authority or primacy tended to be benign: the curia tended to treat its own authority and primacy as something so firmly established that it seldom required fervent or peremptory articulation.[1] In effect, this was as much a result of the fact that the curia in this decade did not often need to assert its authority on its own behalf, so great was the flood of petitioners who on their own initiative now sought out the benefits of papal authority and justice.

Indeed, both statistical and contextual analysis of all extant papal documents suggests that papal practice in this period was almost strictly responsive; and as such, papal business, its *negotia*, was consumed largely by the plaints or petitions of the members of the clerical hierarchy throughout the provinces of western Europe who brought before the curia all manner of their claims, grievances, and lawsuits—typically of a temporal nature. In this way, the papacy became

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[1] It has been suggested, for instance, that Master Gratian, in his *Decretum* (ca. 1140), was not interested in the juridical relationships of the ecclesiastical hierarchy *per se*, as he accepted papal monarchy 'as an established fact.' K. Pennington, *Popes and Bishops: The Papal Monarchy in the Twelfth and Thirteenth Centuries* (Philadelphia, 1984), 80.

primarily responsible for overseeing the maintenance and protection of the rights and properties of an increasingly unified and now liberated Church. The Church was exceedingly wealthy; but that wealth was equally vulnerable, inside and out of the hierarchy. And as the Church continued to expand, property rights and rights of all kinds remained ill-defined; and a culture of rampant clerical competition, as well as secular depredation, compelled the churches to seek out a stronger authority which could confirm, secure, and enlarge their rights and possessions. As a result, the papal reach into the churches and parishes was limited almost exclusively to the pope's petitionary offices especially as Christendom's ultimate tribunal and law enforcement office, and as a universal document and deed producing office for its clergy. Similarly, the papacy and curia of the mid-twelfth century can scarcely be considered to have represented the champions of any 'new reform,' a movement or party predicated upon a Bernardine spiritualism, and intent upon the direct moral regeneration of clergy and parish. Rather, any pastoral and moral—or 'spiritual'—initiatives were largely neglected by a central office as yet incapable of regularly intervening in the affairs of the provinces as far as their sacramental and religious welfare and the affairs of their personnel were concerned.

At the same time, again, the papal political and diplomatic situation remained in flux throughout the period. And while the pope extended his privilege of protection freely upon all sorts of ecclesiastical houses, hospitals, and churchmen, as well as secular princes, from Portugal to the Holy Land, he was unable to abide in his own episcopal city. Indeed, the war with the Roman commune, as well as tenuous diplomatic relations with the Sicilian and German courts, remained principal concerns of the curia throughout the 1140s and 1150s. And in the sustained onrush of petitioners, appellants, and litigants from the provinces seeking to enjoy the fruits of papal primacy and its justice, the curia found itself in a state of near-continuous vagabondage. Yet, the influx of petitioners and litigants to the papal court in this period almost certainly did not diminish. In effect, this is a paradox: though the curia could not subdue Rome or its environs, as the central corporate office of the entire Church it was trusted in the provinces, in a general culture of precarious security and strident competition, that it could offer fairer and more secure adjudication and more efficacious redress to its aggrieved 'members,' the clergy—though laymen alike availed themselves of its utility—and assurance of their existing rights.

In achieving these ends, the procedures of the papal systems of justice and writing office, while operating on basically rational principles, were not as yet thoroughly systematised. Thus, causes often proceeded in an *ad hoc* fashion. As the structural and legal systems of the Church grew, however, throughout the twelfth century, and as the demand for the papacy's justice and its legitimising authority and instruments swelled, especially from mid-century, the papal curia freely offered the services of its authority, of its governance, and legal expertise, culminating invariably

in written form, through an increasing reliance on procedures of delegation, especially to members of the episcopate. Papal business, which was by and large the business of the provinces, was invariably delegated back to the provinces for execution or enforcement, or causes and litigation were delegated outright, providing the curia with a means of keeping pace with demand, and in turn contributing to the growth of the papacy's own institutions, authority, and prestige, while bringing the entire ecclesiastical government, with the curia at its top, more closely knit together. Thus, in a circular manner, the demand from the provinces for the justice, protection, and paper of a curia supported by the pope's primacy contributed to and in effect created trust in and recognition of that very same primacy, as well as the growth and consolidation of curial and Church government. The sum result of these things was that the primary operation of the papacy and curia, and its authority, became the administration of its justice and written confirmation for those who actively sought it, and an overall concern for the temporal state and things of the Church.

Again, what little detailed literature over the last century and a half has been devoted to the papacy and curia in this immediate period has focused largely on the political history, or has been concerned with aspects associated with the Second Crusade. Indeed, the pope's territorial and political 'policies' in this period were extremely important for the subsequent history of the papacy in the central Middle Ages, as another century of intermittent war with the emperor followed the relative peace of the mid-twelfth century. Even Bernard of Clairvaux's lengthy and valuable polemic against papal governance in his time, disguised as a manual of good governance, the *De consideratione*, dedicated to the first Cistercian pope, Eugene III, and composed during his pontificate, devoted a considerable amount of attention to these issues. The work, written in the aftermath of the failure of the Second Crusade, attributed most of the papacy's overall failure to what Bernard regarded as a worrisome if not pernicious preoccupation with temporal concerns.[1] 'This is Peter,' Bernard contrasted for the pope, 'who is known never to have gone in procession adorned with either jewels or silks, covered with gold, carried on a white horse, attended by a knight or surrounded by clamouring servants. Rather, without these trappings he believed it was enough to be able to fulfil the Lord's command, "If you love me, feed my sheep [John 21. 16]." In this finery, you are the successor not of Peter, but of Constantine.'[2]

In fact, it is the opinion here that many of the basic assumptions regarding the temporal or political history of the papacy in this period require revision in their own right. For instance, the traditional assumption that the curia remained inclined towards an active pro-German alliance is

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[1] See, *De consideratione*, Bk. 2. VI. 11 (59), Bk. 4. I. 1 (109-10), Bk. 4. II. 2-5 (112-16), Bk. 4. III. 6-8 (116-19), Bk. 4. VI. 17-22 (131-36).
[2] *De consideratione*, Bk. 4. III. 6 (117).

unconvincing and lacks sufficient contemporary evidence: overall, the circumstances determining the popes' political 'policies' were far more subtle.[1] Nothing, on the other hand, has been written in comprehensive detail on the pope and curia's ecclesiastical governance and administrative business under Lucius II, Celestine II, or Eugene III, in contrast to their twelfth-century predecessors and successors. To an extent, this has been the result of the large shadow which Bernard of Clairvaux (d. 1153) himself has cast over all ecclesiastical history in the last decade of his own life. As a result, essentially all of what has been written on the subject of the *De consideratione* has been done so by Bernardine historians who have analysed the work almost strictly with an eye towards Bernard's own wider ecclesiology, even though the work itself, along with John of Salisbury's *Historia pontificalis*, was unique for the twelfth century to the extent that it provided a sustained, independent, and basically first-hand account of and commentary on the curia and papacy under a particular pope. As E. Kennan in her important historiographical essay on the *De consideratione* itself rightly warned, 'St. Bernard of Clairvaux is an unwilling enigma;' and 'oddly enough, with regard to his policies for reform, Bernard has become almost as well known among modern scholars for his ambiguities as for his doctrines. There now exists a rather bewildering garden of Bernardine studies from which a student can pluck an interpretation of his papal theory as Gregorian, anti-Gregorian, hierarchical, egalitarian, proto-Protestant, or any one of

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[1] My own interest in the temporal-political 'policy' of the curia in this period, vis-à-vis especially the Roman commune, Norman Italy, the German crown, and also the eastern emperor, developed in researching my MA thesis: F. Carlson, *The Papal 'Patrimony' and Temporal Policy from 1139-59* (MA Thesis: W. Washington U., 2002). Most of the source material germane to this topic from the papal documents of the decade 1143-53 are cited in the course of this thesis. Otherwise, for the imperial donations made to St. Peter in the tenth and eleventh centuries, see, Theiner 1, 1-13; *LC*, 345-56, 363-76; *Antiquitates* 5, 827. For other documentary sources for the papacy in the period 1143-53, see, Wibald, no. 33-38, 42, 46, 47, 68, 69, 75, 78, 147, 150, 152, 182, 193, 194, 197, 198, 204, 214-16, 218, 225, 227, 228, 231, 232, 237-41, 243-46, 248, 249, 251, 252, 260, 262, 273, 276, 278-82, 295, 297, 298, 334, 340, 345-47, 364, 372, 375, 378, 404, 407, 410, 412, 414-17, 426; Bernard of Clairvaux, *Letters*, no. 237, 243, 244, 247, 256, 298, 508 (B.S. James, no. 314, 315, 319, 320, 323, 363, 399); see also, Gerhoh of Reichersberg, *Epistolae*, no. 17, col. 564-570, here at, col. 568-69; John of Salisbury, *The Letters of John of Salisbury* 1, ed. W.J. Millor and H.E. Butler, rev. C.N.L. Brooke (Oxford, 1986), 204-15, no. 124. For the primary narrative sources of the period, see esp., the *Historia pontificalis* [*HP*] of John of Salisbury; *the Liber Pontificalis* [*LP*], 383-87, composed by the papal chamberlain Boso; the entire *Gesta* of Otto of Freising, and his *Two Cities*, Bk. 7. XXIII-XXXIV. 322-36; *Annales Casinenses*, 309-12; *Annales Ceccanenses*, 283-84; Romuald of Salerno, *Chronicon*, 225-41; Falco of Benevento, *Chronicon*, 243-52; *Sigeberti Gemblacensis chronica cum continuationibus: Continuatio Praemonstratensis*, *MGH SS* 6, 451-56; *Andreae Danduli chronica*, 237-38, 241-47, 364-65; Godfrey of Viterbo, *Pantheon*, 260-61; *Gotifredi Viterbiensis opera: Catalogus pontificium et imperatorum Romanorum Tiburtinus*, *MGH SS* 22, 357; Bernard Maragone, *Annales Pisani*, *RIS*^{2} 6/2, 11-15; *Barbarossa in Italy*, trans. T. Carson (New York, 1994), 1-30; Odo of Deuil, *De profectione Ludovici VII in orientem*, ed. V.G. Berry (New York, 1948), 6-10, 58, 82, 94; John Kinnamos, *Deeds of John and Manuel Comnenus*, trans. C.M. Brand (New York, 1976), 37-38, 58, 71-82, 94, 106-34, 130; *Annalista Saxo*, *MGH SS* 6, 770-76.

a variety of other hues.'[1]

The last and largest book of the *De consideratione*[2] was written as an extended spiritual-mystical rumination, intended to instruct its recipient on the salutary means of spiritual-mystical contemplation whereby the spirit of the pontiff might be edified and raised up so as to exalt him above the paltry cares and concerns with which his current office was involving him, and whereby he might better become the true spiritual father and pastor of the Church Universal. The remaining books, the great bulk of the work, offered an extended point-by-point denunciation of the current worldly preoccupations of the Church, the pope, and the curia. The consonant theme of the work was that the pope had abandoned all of his inherent pastoral responsibilities: the pope had allowed himself to be divorced from all 'spiritual' responsibilities towards the churches which should be his sole concern. Instead, the pope had become little more than a prince for the earthly concerns of his own court and the temporal jealousies of decadent churchmen, so that such worldly preoccupations affected ecclesiastical business broadly and pervasively as it became consumed by lawsuits and a despicable solicitude for clerical possessions. Thus, Bernard assailed the Cistercian pope, Eugene III: 'You are the heir of the Shepherd and even if you are arrayed in purple and gold, there is no reason for you to abhor your pastoral responsibilities; there is no reason for you to

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[1] E. Kennan, 'The "*De consideratione*" of St. Bernard of Clairvaux and the Papacy in the mid-Twelfth Century: A Review of Scholarship,' *Traditio* 23 (1967), 73-116, here at, 73. On Bernard in general, see, e.g., E. Vacandard, *Vie de Saint Bernard, abbé de Clairvaux* (Paris, 1910); W. Watkins, *St. Bernard of Clairvaux* (Manchester, 1935); D. Knowles, 'St. Bernard of Clairvaux, 1090-1153,' *Dublin Review* 227 (1953), 104-21. On Bernard's ecclesiology as evidenced especially by the *De consideratione*, see E. Kennan's historiographical essay, in *Traditio* 23, which summarised the voluminous debate over Bernard's ecclesiology, the *De consideratione*, and Bernard's relationship to the papacy. The closing section of the article provided the author's own balanced insights into the whole problem. On this, see also, as treated by E. Kennan, B. Jacqueline, *Papauté et épiscopat selon saint Bernard de Clairvaux* (Saint-Lô, 1963); B. Jacqueline, 'Saint Bernard de Clairvaux et la curie romaine,' *Rivista di storia della chiesa in Italia* 7 (1953), 27-44; S. Chodorow, *Christian Political Theory and Church Politics in the mid-Twelfth Century: The Ecclesiology of Gratian's* Decretum (Berkeley, 1972), 6, 24, 26, 36-37, 41-42, 46-47, 53, 58-59, 61-73, 114-16, 140, 143-44, 180-82, 204-05, 227-28, 244-46, 260-65; A. Fliche, *La réforme grégorienne et la reconquête chrétienne (1057-1123)* (Histoire de l'Église depuis les origines jusqu'à nos jours 8: Paris, 1950), 179-98; A. Fliche, 'L'influence de Grégoire VII et des idées grégoriennes sur la pensée de saint Bernard,' *Saint Bernard et son temps* 1 (5e [1927] Congrès de l'Association bourguignonne des sociétés savantes: Dijon, 1928-29), 137-50; A. Fliche, 'Bernard et la société civile de son temps,' *Bernard de Clairvaux* (Commission d'histoire de l'Ordre de Cîteaux 3: Paris, 1953), 355-78; A. Fliche, R. Foreville, and J. Rousset, *Du premier Concile du Latran à l'avènement d'Innocent III (1123-1198)* (Histoire de l'Église depuis les origines jusqu'à nos jours 9: Paris, 1948), 13-41; W. Ullmann, *The Growth of Papal Government in the Middle Ages* (London, 1962), 426-37; M. Pacaut, *La théocratie: L'Église et le pouvoir au moyen âge* (Paris, 1957), 109-14; E. Jordan, 'Dante et Saint-Bernard,' *Bulletin du jubilé* 4 (Comité français catholique pour la célébration du sixième centenaire de la mort de Dante Alighieri: Paris, 1921-), 267-330; H.V. White, 'The Gregorian Ideal and Saint Bernard of Clairvaux,' *Journal of the History of Ideas* 21/3 (1960), 321-48.

[2] In 1149 the work was sufficiently advanced that Nicholas of Clairvaux, Bernard of Clairvaux's secretary, could announce the dispatch of *Book One* to Abbot Peter of Cluny. *Book Two* was begun after the failure of the Second Crusade; *Book Three* was written shortly after the death of Bishop Hugh of Mâcon in 1152 (d. December 1151); and *Book Five* was completed in 1152-53, as Bernard continued to write on his death bed. E. Kennan, *Five Books on Consideration*, trans. J.D. Anderson and E.T. Kennan (Cistercian Fathers 13: Kalamazoo, 1976), 184.

be ashamed of the gospel. If you but preach the gospel willingly you will have glory even among the apostles. To preach the gospel is to feed. Do the work of an evangelist and you have fulfilled the office of shepherd.'[1]

Accordingly, because of the extensive length and breadth of its appraisal of papal governance ca. 1150, the *De consideratione* is an important touchstone for any undertaking into the 'policy' and practice of the papal curia and its systems of justice in the mid-twelfth century. Nevertheless, such a thorough undertaking has been lacking with regard to the historiographical record. In fact, as explicitly and emphatically as Bernard made his assessment of actual curial practice and contemporary clerical culture, this has not been sufficiently emphasised by historians who have focused largely on the *De consideratione* as insight into Bernard himself. As a result, the work has never been comprehensively or categorically weighed and analysed against papal practice as it actually existed, that is, through the manifestations of papal documents. This has remained so despite the lasting influence of the work itself: Innocent III has been said to have held it with especial regard; while Wyclif, Hus, and Luther all were influenced by it.[2] Likewise, W. Ullmann saw its direct influence on the papal office 'because in inimitable and concise language [Bernard] laid down a number of basic points which are clearly traceable in the official output of subsequent pontificates.'[3] More importantly, however, the actual papal record of the decade 1143-53 has not been subjected to any comprehensive and thorough survey and analysis. The present study intends to undertake such an examination, primarily of the papal letters, in an effort to gain some fuller insight into how exactly the papacy around mid-century exercised its office and authority and, equally important, how that authority was received by the churches of western Europe.

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[1] *De consideratione*, Bk. 4. III. 6 (117); see also, *De consideratione*, Bk. 2. VI. 11 (59).
[2] See, P. de Vooght, 'Du *De consideratione* de saint Bernard au *De potestate papae* de Wyclif,' *Irénikon* 26 (1953), 114-22; J.T. Noonan, *Bribes* (London, 1984), 283, 293, 306.
[3] W. Ullmann, *Growth*, 182.

1 *THE PAPAL LETTERS, THE PRIMACY, AND THE* CAUSAE MAIORES

A fair amount has been written over the last century on the rise of the papal chancery in the Middle Ages, especially after the twelfth century.[1] By the mid-twelfth century the operation or production of the papal chancery was approaching the level which it would achieve during the period of its fully developed and highest form—a period which extended roughly through the thirteenth century. By 1143 it is understood that a semi-permanent, semi-enclosed 'office' usually under a chancellor, or *cancellarius*, now almost always a cardinal, was variously responsible for the preparation and production—and in certain instances the preservation—of nearly all papal documentation. Papal, as opposed to Roman, scribes or notaries were now permanently attached to the curia, employing a regularised and universally recognisable script as well as a sophisticated *cursus* which provided papal prose with a distinctive cadence and potential safeguard against forgery. At the same time, the chancellor himself has been assumed to have become an important and influential member of the curial government.

For the chancery personnel itself in the decade 1143-53, however, the actual office of chancellor was not continuously maintained. Under Celestine II, Lucius II, and Eugene III, almost every formal *datum* clause to a papal document—which formally closed or authenticated the document and as a rule followed the subscriptions of the pope himself and any number of his

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[1] See, R.L. Poole, *Lectures on the History of the Medieval Chancery down to the Time of Innocent III* (Cambridge, 1915); H. Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien* (Leipzig, 1889-; rept., Berlin, 1958), esp. v. 1, 45-352; Pontificia Hibernica: *Medieval Papal Chancery Documents concerning Ireland, 640-1261* 1, ed. M.P. Sheehy (Dublin, 1962-), xiii-xlii; C.R. Cheney, *The Study of the Medieval Papal Chancery: The Second Edwards' Lecture Delivered within the University of Glasgow on 7 December, 1964* (Glasgow, 1966); P. Herde, *Beiträge zum päpstlichen Kanzlei- und Urkundenwesen im 13. Jahrhundert* (Münchener historische Studien: Abteilung Geschichtliche Hilfswissenschaften 1: Kallmünz, 1967), esp. 167, 180, 191, 195, 241-44; P. Herde, 'Papal Formularies for Letters of Justice (13th-16th Centuries): Their Development and Significance for Medieval Canon Law,' *Proceedings of the Second International Congress of Medieval Canon Law*, ed. S. Kuttner and J.J. Ryan (Vatican City, 1965), 321-45; K.W. Nörr, 'Institutional Foundations of the New Jurisprudence,' *Renaissance and Renewal in the Twelfth Century*, ed. R.L. Benson and G. Constable, with C.D. Lanham (Cambridge, Mass., 1982), 324-37; U.-R. Blumenthal, 'Papal Registers in the Twelfth Century,' *Papal Reform and Canon Law in the Eleventh and Twelfth Centuries* (Aldershot, 1998), 135-51; *The Register of Pope Gregory VII (1073-1085)*, ed. H.E.J. Cowdrey (Oxford, 2002), xi-xvii. On the word 'chancery,' which was not used until after 1180, see H.-W. Klewitz, '*Cancellaria*: Ein Beitrag zur Geschichte des geistlichen Hofdienstes,' *Deutsches Archiv* 1 (1937), 44-79. Two decretals from Alexander III (*Decretales*, Gregory IX, Bk. 2. XIII. 2 [JL, 14,139], Bk. 2. XXII. 3 [JL, 14,142]) contained the first use of the term *cancellaria* in the sense of a place where the papal *litterae fuerunt compositae*, and 'not with the meaning of the office of the chancellor, as the word is used in the second half of the century in some European states to express, possibly under canonistic influence, the abstraction of the office from the person.' K.W. Nörr, *Jurisprudence*, 330.

cardinals—was subscribed with the form *Datum apud...per manum* either of the pertinent cardinal-chancellor, his representative 'acting with his authority,' or else another lesser papal official acting in that capacity, but without reference to a particular scribe, or *scrinarius*.[1] For the last three and a half years of Eugene's pontificate the office of chancellor was held in abeyance, during which time the future chamberlain (from 1154) and cardinal (from 1156) Boso, as '*scriptor* of the holy Roman Church,' fulfilled the function, subscribing[2] chiefly until 3 May 1152, with interruptions—during which time other minor officials of the chancery subscribed—when Roland, the future Pope Alexander III, began to subscribe as 'cardinal-priest [of S. Marco (1151-59)] and chancellor.'[3] This lengthy abeyance of the office—though there had been other briefer ones since 1144—leading up to Cardinal Roland's appointment, is not readily explicable. Boso himself, who perhaps accompanied the future Pope Adrian IV on his celebrated legation to Scandinavia from March 1152,[4] would ultimately come to play a highly influential role in curial government as a cardinal and chamberlain under Adrian and Alexander III.

In any event, these *datum* clauses to chancery documents, which merely authenticated documents but offered no further information about their actual preparation or the scribes responsible, represent by and large the extent of the information provided in the papal record of this period about the practical inner-workings of the papal writing offices. As a result, very little is known for this period of the actual procedure in the preparation *per se* of papal documents: they were presumably drafted or redacted by notaries or *scrinarii*; and various drafts were produced before the final or fair copy was authenticated. Any further evidence concerning the actual

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[1] For the following, JL 2, 1, 7, 22; on the cardinals themselves, see, ch. 2.1 and Appendix 2.

[2] Made chamberlain by Adrian IV in 1154, and then cardinal-deacon of SS. Cosma e Damiano (1156-65/66), and promoted by Alexander III as cardinal-priest of S. Pudentiana (1165/66-78); on Boso, see, F. Geisthardt, *Boso*; B. Zenker, *Mitglieder*, 149-52.

[3] Under Celestine II the *datum* clauses were subscribed by his successor, the future Lucius II, as cardinal-priest of S. Croce in Gerusalemme and '*bibliothecarius* of the holy Roman Church.' Though he continued to subscribe with the older title of *bibliothecarius*, that he was actually appointed 'chancellor' by Innocent II was affirmed by his own official papal biographer, the future Cardinal Boso: *LP*, 385. Under Lucius II, as pope, the chancery *datum* clauses were not subscribed by a separate chancellor but merely by a lesser official of the curia—the former chancellor Lucius may have maintained some direct control over the 'office' until the very end of his pontificate—until the day before Lucius' death when the Englishman Robert Pullen, cardinal-priest of Martino e Silvestro (1144-46), began to subscribe on 14 February 1145 as 'cardinal-priest and chancellor.' Under Eugene III official chancellors were only intermittently appointed or in residence to personally subscribe papal documents. Robert last subscribed on 2 September 1146. For the next three months another lesser official of the curia would continue to subscribe until 17 December when Guido(3), cardinal-deacon of SS. Cosma e Damiano (1132-49), began to subscribe as 'chancellor.' He continued to do so until early May 1149, with several extended interruptions—Guido(3) would go on at least two legations to Germany both early on and at the very end of his chancellorship—during which various other lesser officials would subscribe 'holding the authority (*vicis*) of Lord Guido(3), cardinal-deacon and chancellor of the holy Roman Church.' There were no extant signatures until early November 1149 when the papal *scriptor* Boso began to subscribe.

[4] See, *LP*, xxxix; A. Bergquist, 'The Papal Legate: Nicholas Breakspear's Scandinavian Mission,' *Adrian IV, the English Pope (1154-1159): Studies and Texts*, ed. B. Bolton and A.J. Duggan (Ashgate, 2003), 41-48, here at, 42.

activities of the sub-officers of the papal chancery in this period was provided by a relatively small dossier of documents pertaining to the popes' own feudal or patrimonial business. These documents, preserved largely by the papal *camera*, typically contained alternate or variant forms to the formal or conventional chancery *datum* or *signum* clause.[1] According to this evidence, papal *notarii* or *scrinarii* were responsible for the actual drafting of most of the important patrimonial documents of the papacy, as were, occasionally, regional judges not actually attached to the curia. These scribes were also apparently being asked to draft similar documents for independent parties, under the papal aegis. These documents were also not always completed with the necessary authentication of a higher curial authority. As a rule, it was only these types of patrimonial documents, furthermore, which included the subscription of any lay witness, including members of the papal military household, or of anyone for that matter—the *datum* clause itself notwithstanding—who was not a member of the college of cardinals.

Otherwise, it is obscure as to who and to what extent were directly responsible, as a matter of course, for the actual wording, structure, and content of the thousands of papal documents surviving from the period 1143-53: whether scribe, chancellor, pope, or other curial officers, or, as in the case of privileges of protection, even the petitioner himself. The conventional *datum* clauses to ordinary chancery documents, as well as the preceding subscriptions of pope and cardinals, only indicated that they were being at least proofed and authenticated by the highest members of the curia. Beyond this, it is fairly certain that the chancery in this period was responsible for maintaining and transporting with the curia in the course of its travels sets of copies of at least some of the documents, especially 'letters,' which the pope and his predecessors were responsible for issuing. In fact, it is now generally accepted that some type of papal register existed under Alexander II and his successors through the twelfth century, though they no longer exist: the last reference to any twelfth-century register occurred in the first quarter of the thirteenth century under Honorius III, from whose predecessor, Innocent III, a more or less continuous series of papal *registri* exist in the Vatican Archives.[2] More immediately, a non-papal protocol from the archives of Huesca, for a suit litigated at the curia in early 1145 between the bishops of Huesca and Roda,[3] indicated that under Eugene III papal *registri* were transported with the curia outside of Rome and were open for consultation to visitors. Eugene's own personal register was similarly definitely

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[1] See, *PL*, Eugene III, no. 583 (*IP* 3, 251/1; JL, 9726/9727); Theiner 1, 14, no. 16 (*LC*, 402-03, no. 123; *Antiquitates* 4, 37-38; *IP* 2, 204/2); *LC*, 380-82, no. 91(*Antiquitates* 3, 793-96; *IP* 3, 241/14), *LC*, 382-83, no. 92 (Theiner 1, 14-15, no. 18; *Antiquitates* 3, 777-78; *IP* 1, 187/5), *LC*, 383, no. 93 (*Antiquitates* 3, 779; *IP* 1, 192/2), *LC*, 383-84, no. 94 (Theiner 1, 14, no. 17; *IP* 2, 207/3), *LC*, 384, no. 95 (*Antiquitates* 2, 559-60; *IP* 2, 207/1), *LC*, 384-85, no. 96 (*Antiquitates* 2, 559-60; *IP* 2, 207/2); *APRI* 2, no. 377 (Theiner 1, 13-14, no. 15; JL, 8465); PU in Turin, no. 13 (*IP* 6/2, 174/14); Nachträge zu den PU in Italiens 8, no. 4 (*IP* 6/2, 230/3).

[2] For this, for the papal registers, see, ch. 7.3.

[3] PUS2, no. 46; the protocol and case is discussed at length below in ch. 3.5; see also, *PL*, Eugene III, no. 2; PUS2, no. 47, 48, 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934), 60 (JL, 9258).

referred to by John of Salisbury, Alexander III, Celestine III, and Innocent III.[1] Nevertheless, it should be understood that what exactly constituted a papal *registrum* whenever one was referred to in the literature of the central Middle Ages is far from certain,[2] as the practice itself of registering at the curia appears to have proceeded haphazardly, and perhaps differently from pontificate to pontificate, although apparently anyone could pay to have a document received at the curia registered in its archives.

This same degree of obscurity extended to the products of the chancery, within which itself the classification of papal documents remained nebulous. Scholars, for instance, have construed or applied various terms of classification or distinction which in no case can be applied to twelfth-century papal documents with thorough consistency. They have distinguished, for instance, between privileges and letters, letters of justice and of grace, *litterae cum filo canabis* and *litterae cum serico*; while a variety of other terms were either used in the chancery itself or have been adduced by modern writers—e.g., *acta, auctoritates, breviae, bullae, canones, chartae, constitutiones, decreta, decretales, epistolae, epistolae decretales, mandata, paginae, praecepta, privilegiae, rescripta, scripta, sententiae*.[3] The fact was that in the mid-twelfth-century chancery the types of forms of documents or their purposes often converged; and the chancery itself most often simply preferred to use, in reference to its own writings, the actual term *scripta*. The two most salient and consistently distinct types which I have discerned, or which seem to have emerged, in the documents produced around mid-century were those which conveyed papal protection generally or as the main purpose of the instrument (mostly though not always with formal and conventional formulae), termed here 'privileges of protection;' and those that did not—termed conveniently, 'letters.' For the present purpose of this thesis, I have been able to ascertain and identify through the various published collections and calendars no less than 1,058

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[1] John of Salisbury, *HP*, 25, mentioned that he was never able to find in the *registrum* of Eugene III certain alleged chapters of Gilbert de la Porrée which had been adduced in the proceedings of that bishop's case conducted 'in consistory' after the Council of Reims, among the 'acts' of that council: *Unde eadem capitula, licet ea audierim, utpote que presens aderam, publicari, tamen nec inter acta concilii, nec in domini Eugenii regesto potui repperire, sed in scriptis memorati Gaudfridi repperi, qui postea abbas Igniacensis contra eundem episcopum, sed iam defunctum, scripsit librum eleganti quidem stilo, recto gratus universis, nisi videretur invehentis habere speciem, et ex quacunque causa conceptam amaritudinem continere. PL*, Alexander III, no. 671, col. 633, states: *In registro patris et praedecessoris nostri Eugenii papae annotatum invenimus...Transcriptum autem illius quod in supra scripto registro invenimus tibi praesentibus litteris inclusum transmittimus*. And in PUN, no. 172, Alexander noted: '*nos in registro eiusdem patris nostri Eugenii papae diligentius inquiri fecimus, in quo eum prescriptam concordiam invenimus confirmasse*;' for further references to Eugene's 'register' by Celestine III, and Innocent III, see, PUS1, no. 256; *Decretales*, Gregory IX, Bk. 1. XLI. 5; PUP, no. 52; see below, ch. 3.5 and 7.3. See also, N. Häring, 'Notes on the Council and the Consistory of Rheims, 1148,' *Mediaeval Studies* 28 (1966), 39-59, here at, 53; U.-R. Blumenthal, *Papal Registers*, 143-46.

[2] This is discussed at length in ch. 7.3.

[3] Cf., esp. for the thirteenth century, P. Herde, *Beiträge*, 57-71; R.L. Poole, *Medieval Chancery*, 40-41.

extant papal 'letters' and 949 'privileges of protection'[1] attributable to the period 1143-53 which constitute here a closed data-base for analysis.[2]

In the context of the twelfth century, these numbers appear to represent a degree of unmatched activity both in comparison to preceding pontificates and to contemporary European governments. M.T. Clanchy devoted an entire monograph to the profound growth and growing interest in written records and record-keeping throughout the course of the twelfth century in

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[1] The 'privileges of protection' are derived from those sources listed in the *Abbreviations* section under the heading 'The "Letters,"' as well as 'Ältere Papsturkunden in den päpstlichen Registern 2,' ed. P.F. Kehr, *NKGWG* (1902), 442-95; 'Die älteren Urkunden für Helmarshausen und das Helmarshäuser Kopialbuch,' ed. P.F. Kehr, *Neues Archiv* 49 (1932), 86-114; 'Le bolle pontificie anteriori al 1198 per S. Leonardo "de Lacu Verano,"' ed. A. Hessel, *Bullettino senese di storia patria* 8/2 (1901), 333-44; 'Nachträge zu den Papsturkunden in Italiens 1,' ed. P.F. Kehr, *NKGWG* (1905), 321-80; 'Nachträge zu den Papsturkunden in Italiens 3,' ed. P.F. Kehr, *NKGWG* (1909), 435-517; 'Nachträge zu den Papsturkunden in Italiens 6,' ed. P.F. Kehr, *NKGWG* (1912), 321-83; 'Nachträge zu den Papsturkunden in Italiens 7,' ed. P.F. Kehr, *NKGWG* (1912), 414-80; 'Papsturkunden des östlichen Deutschlands: Ein Reisebericht,' ed. A. Brackmann, *NKGWG* (1902), 193-223; 'Papsturkunden in Brescia und Bergamo: Eine Reisebericht,' ed. M. Klinkenborg, *NKGWG* (1897), 263-82; 'Papsturkunden in Parma und Piacenza: Bericht über die Forschungen von L. Schiaparelli,' ed. P.F. Kehr, *NKGWG* (1900), 1-75; 'Papsturkunden in Rom: Erster Bericht,' ed. P.F. Kehr, *NKGWG* (1900), 111-97; 'Papsturkunden in Rom: Zweiter Bericht,' ed. P.F. Kehr, *NKGWG* (1900), 360-436; 'Papsturkunden in Salerno, La Cava und Neapel,' ed. P.F. Kehr, *NKGWG* (1900), 198-269; 'Papsturkunden in Venedig: Eine Reisebericht,' ed. P.F. Kehr, *NKGWG* (1896), 277-308; 'Über die Papsturkunden für S. Maria de Valle Josaphat,' ed. P.F. Kehr, *NKGWG* (1899), 338-68. Of this total, 213 occurred under Celestine II and Lucius II; 194 under Eugene III through 1146; 227 under Eugene III 1147-8 July 1148 (the Council of Cremona); and 315 after 8 July 1148 including undated specimens.

[2] These documents represent here a closed system of data, as contained in those sources enumerated in the *Abbreviations* section under the heading 'The "Letters,"' and in the above note for the remaining privileges of protection. To some extent I hesitate to use, in a precise sense, the designation 'the letters of the chancery,' as I have also included those letters in the *Papsturkunden* volumes and the *Italia Pontificia*, though relatively few in number, addressed by cardinals, which were written either at the curia or in the provinces as legates. Furthermore, I have included those documents, again relatively few in number, written on the part of independent parties by papal scribes representing the so-called feudal instruments of the papacy concerning the papal Patrimony. In certain instances, a degree of personal discretion has been required in distinguishing between formal privileges of protection and those which briefly stipulated or conveyed protection, without all of the conventional formulae. Though these exceptions were, again, relatively few, some have been classified here as privileges of protection and some have not. Also, certain entries in the *Italia Pontificia* are extrapolations of later papal documents or other independent sources. Similarly, while certain entries in the *Liber Censuum* represented definite chancery productions, though not 'letters' properly, others, such as certain *census*, are probably datable to this period but did not probably represent proper documentary productions of the chancery. As C.R. Cheney noted: 'I have spoken so far of letters; but these are not the only documentary remains. As the whole field of papal archives is explored, other types of evidence emerge. The financial records of the apostolic *camera* reflect light on the procedure and the personnel of the chancery. Formularies and chancery ordinances make their contribution.' C.R. Cheney, *Medieval Chancery*, 17-18. Lastly, for a handful of as yet unedited 'letters' or 'privileges of protection,' I have had recourse only to the synopses in the calendars of JL and *IP*; others have come to us only as fragments. See, L. Santifaller, *Neuere Editionen mittelalterlicher Königs- und Papsturkunden: Eine Übersicht* (Österreichische Akademie der Wissenschaften: Mitteilungen der Wiener Diplomata-Abteilung der *MGH* 6: Vienna, 1958), for source materials for all edited and published papal letters and editions up to 1958. For the history behind the 'Pius-Stiftung fur Papsturkunden,' as brain-child of P. Kehr, who first published his plan in 'Über den Plan einer kritischen Ausgabe der Papsturkunden bis Innocenz III,' *NKGWG* (1896), 72-86, see also, L. Santifaller, *Neuere Editionen*, 63-66; C.R. Cheney, *Medieval Chancery*.

England.[1] Comparing the quantity of extant letters per year of reign or pontificate issued by the English and French kings and popes from the Norman Conquest through the reign of Henry II, he observed that the numbers rise almost geometrically, doubling every two or three decades, and accelerating at an even greater rate into the thirteenth century. Of extant letters per year, Clanchy totalled about 115 for Henry II's reign; about forty for Stephen's; and about twenty for Louis VII's. For the popes, he totalled about twenty-five documents per year for Alexander II's pontificate; about forty-five for Gregory VII's; forty for Urban II's; about fifty for Paschal II's; and seventy-five for Innocent II's.[2] Taking my own average totals of about 330 extant documents issued per year under Celestine II and Lucius II, and over 187 under Eugene III, it seems clear that papal chancery production had increased profoundly within a century, and that it was clearly outdistancing that of the leading secular powers.

Number of:	Privileges of Protection	Letters	Letters per Month	Total	% of Privileges of Protection
Celestine II and Lucius II	213	226	14.1	439	48.5
Eugene III—Through 1146	194	204	9.1	398	48.7
Eugene III—1147-8 July 1148[3]	227	186	10.3	413	55
Eugene III—After 8 July 1148 and Undated	315	442	7.4	757	41.6
Eugene III—Total	736	832	8.3	1,568	46.9
Total	949	1,058	9.1	2,007	47.3

[1] M.T. Clanchy, *From Memory to Written Record, England 1066-1307* (London, 1979); see also, R. Van Caenegem, 'The Law as Evidence in the Twelfth Century: European Perspective and Intellectual Background,' *Proceedings of the Second International Congress of Medieval Canon Law*, ed. S. Kuttner and J.J. Ryan (Vatican City, 1965), 297-310, here at, 302-10; cf., Peter Classen, '*Res gestae*, Universal History, Apocalypse: Visions of Past and Future,' *Renaissance and Renewal in the Twelfth Century*, ed. R.L. Benson and G. Constable, with C.D. Lanham (Cambridge, Mass., 1982), 387-417, on the enormous increase in historical writing as part of the 'twelfth century renaissance.'

[2] M.T. Clanchy, *From Memory*, 42-45. For his statistics, Clanchy cited, for England from William I to Stephen, the numbers computed by A. Murray, 'Pope Gregory VII and his Letters,' *Traditio* 22 (1966), 149-202, here at, 166 n. 46; for Henry II's reign the estimate of a total of 3500-4500 originals and copies was taken from T.A.M. Bishop, Scriptores regis: *Facsimiles to Identify and Illustrate the Hands of the Royal Scribes in Original Charters of Henry I, Stephen and Henry II* (Oxford, 1961), 3, as computed by R. Van Caenegem, *Royal Writs in England from the Conquest to Glanville* (Selden Society 77: London, 1959), 4. For France, the totals (including mentions of *acta* as well as extant copies) were derived from R. Fawtier, *The Capetian Kings of France: Monarchy and Nation, 987-1328*, trans. L. Butler and R.J. Adam (London, 1962), 8; see also, C.H. Lawrence, *History* 58 (1973), a review of W. Ullmann, *A Short History of the Papacy in the Middle Ages* (London, 1972), 428-29, here at, 429. For the papacy, the numbers were based on JL; cf., R.W. Southern, *Western Society and the Church*, 109, and A. Murray, *Gregory VII*, 164-66, 201-02.

[3] That is, the period of the pope and curia's French sojourn, from the time they left central Italy until the Council of Cremona held on 8 July 1148.

What is immediately curious for the decade 1143-53 is the greater proportion of existing documents issued under Eugene III's two immediate predecessors. This might be accounted for to some extent by the fact that there was a significantly lower rate of privileges of protection issued in the final five years of Eugene's pontificate: given the propensity of certain houses to obtain renewals of privileges of protection under successive popes, there was bound to be a pattern of diminishing returns in the issuing of those privileges as any pontificate progressed. Yet, even the proportion of papal 'letters' existing from the sixteen months of Celestine II and Lucius II's pontificates is significantly greater than that from all of Eugene III's tenure, and nearly twice that from the final five years. No ready explanation presents itself to account for this discrepancy, other than the fact that Celestine and Lucius, unlike Eugene, both had been able to reside in Rome. Yet, the proportion is still smaller even from that period during which the curia resided beyond the Alps (1147 and the first half of 1148), and was thus more accessible to non-Italian petitioners. This is impossible to account for entirely, and in fact may have been largely a matter of accident.

Otherwise, the numbers indicate that there was a considerable overall growth in the number of documents issued by the papal chancery in the decade 1143-53 against the preceding periods. Two simultaneous factors need to borne in mind here, however. First, from the mid-eleventh century through the twelfth the population of western Europe may have doubled; while, secondly, the number of religious houses increased perhaps tenfold.[1] Thus, the physical growth of the Church and its religious houses alone must have contributed significantly to the sheer numbers and needs of churchmen looking to central document-producing administrations which could establish and protect their conflicting and ill-defined rights. Beyond these things, it is impossible to surmise even a rough estimate of the actual output—as opposed to the extant output—of the papal chancery in any period of the twelfth century. Clanchy supposed that for King Henry I of England's reign, a multiple of 100 would be an acceptable conjectural mean to appreciate the annual total output of royal letters.[2] Applied to the papal record, such a multiple would give us over 1,700 papal documents issued per month in the period 1143-53, or over fifty-five daily. If even half of this total is allowed, the chancery, given the curia's continuous physical displacement in the same period, was certainly kept busy as a writing office. And as the great majority of extant documents produced in the same period resulted only through some form of petition or impetration made by churchmen at the curia, the papacy was clearly striving to meet the considerable demand placed upon its services from the provinces.

Indeed, that this was reality was reflected in the *arengae* or proems of the papal letters, which served as preambles to many papal documents and, as stylised opening flourishes meant to

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[1] See, M.T. Clanchy, *From Memory*, 44-45.
[2] M.T. Clanchy, *From Memory*, 42; see also, T.A.M. Bishop, *Scriptores regis*, 30-32; R. Van Caenegem, *Evidence*, 303.

give them a certain sonorous and impressive sound, provided broad and rhetorical statements on the nature of the Church or, especially, on the pope's place and role in the Church's governance:[1] around 300 total letters (less than one-third of the total 'letters' in their edited or redacted forms) of the period 1143-53 contained an *arenga* proper, that is, as a preamble only. Thus, while because of their rhetorical nature and similarity of forms—and in many cases their repetition—the tendency must be resisted to read too much into their inclusion in any letter *a priori*, with few exceptions[2] the *arengae* employed in this period expressed some uniformity of import: the direct or indirect papal concern for the preservation, confirmation, and protection of the persons, goods, rights, and even acts of the existing ecclesiastical hierarchy. To this end, the greater part of the surviving examples seem to have functioned as vague catch-alls, applied broadly and to some extent indiscriminately, or at least interchangeably, in letters concerning the 'religious' status of houses, chapters, and prelates, the assignment or confirmation of their 'churches,' and, most importantly, their temporalities, rights, and the decisions to their numerous legal suits.

The most common or unifying theme of these *arengae* was the papal 'care' for the churches, clergy, or ecclesiastical things, whether that care was merely useful or incumbent upon the papal office.[3] The tone in which the need for such papal care was expressed, however, was seldom assertive or overtly authoritative: it was expressed invariably as a humble yet irresistible papal 'duty' or 'debt (*debitum*).' The papacy pronounced itself with regularity in the course of the *arengae* explicitly as 'debtors' to the churches and churchmen,[4] for whom it had to exercise a necessary *sollicitudo.*[5] This papal debt meant essentially that the pope was to oversee benignly,

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[1] It has been thought that a large collection of such aphorisms existed within the writing offices of the chancery at any given period, out of which a formula appropriate to a particular case could be chosen. None of these formularies, however, have survived from the twelfth century; see, on this, P. Herde, *Formularies*, 321-22, and 321 n. 2, for literature on the debate; L. Santifaller, 'Die Verwendung des *Liber diurnus* in den Privilegien der Päpste von den Anfängen bis zum Ende des 11. Jahrhundert,' *Mitteilungen des Instituts für österreichischen Geschichtsforschung* 49 (1935), 225-366; G. Barraclough, *Public Notaries and the Papal Curia: A Calendar and a Study of a* Formularium notariorum curie *from the Early Years of the Fourteenth Century* (London, 1934); on English ecclesiastical chanceries, see, C.R. Cheney , *English Bishops' Chanceries 1100-1250* (Manchester, 1950). For editions of the controversial ninth-century formulary, the *Liber diurnus*, see, *Liber diurnus Romanorum pontificum*, ed. T.E. von Sickel (Vienna, 1889); ed. H.B. Foerster (Bern, 1958).

[2] See, e.g., Appendix 1, no. 5, 6, 12, 102, 152, 153, 154, 155, 196, 204, 265, 271.

[3] See, Appendix 1, no. 20, 21, 29, 33, 36, 37, 40, 43, 52, 58, 64, 71, 72, 73, 79, 81, 165, 181, 197, 217, 219, 223, 245, 250, 255, 279, 280.

[4] See, Appendix 1, no. 2, 7, 23, 25, 26, 49, 53, 56, 58, 67, 68, 71, 84, 161, 163, 164, 171, 190, 206, 208, 210, 212, 213, 214, 215, 216, 222, 244, 261, 263, 268, 272, 294.

[5] See, Appendix 1, no. 13, 21, 22, 24, 26, 28, 29, 34, 35, 36, 37, 52, 57, 58, 59, 61, 63, 68, 69, 70, 84, 85, 130, 161, 162, 165, 170, 171, 176, 177, 188, 189, 197, 216, 235, 247, 250, 251, 259, 261, 262, 263, 269, 270, 279. For the duty of episcopal 'solicitude,' see, Appendix 1, no. 220, 249, 259; for that of priests (of 'subordinate priests'), see, no. 223; and for the secular powers, see, no. 281, 285, 289. In such contexts, the pope occasionally describes himself as the 'mother' and, more often, 'father' of all churches. For 'mother,' see, Appendix 1, no. 15, 214, 221, 235, 268; see also, no. 19, 39, 76, 145, 281, 294; for 'father,' no. 13, 14, 22, 26, 29, 33, 34, 42, 53, 55, 58, 61, 66, 76, 84, 130, 161, 170, 176, 177, 181, 188, 216, 247, 250, 261, 262, 269, 295. The term occurred most often in the phrase 'paternal solicitude;' it also occurred in the phrase 'paternal affection' (Appendix 1, no. 14, 29, 33, 53, 66, 76, 161), 'paternal kindness' (no. 42, 55, 295), and

though seldom directly, the churches from its 'watchtower (*speculum*);'[1] to which end, the pope often invoked the need or duty to protect or enlist his 'brother bishops' in the provinces.[2] In a similar manner, it was commonly the express papal duty to provide for churches, churchmen, or other ecclesiastical things his 'fortification,' 'protection'[3] or 'confirmation,'[4] or to 'affirm,' 'make firm,' or maintain their *firmitas*.[5] Or in other terms the pope was to 'strengthen'[6] them, to preserve their *stabilitas*[7] or *status*,[8] and to 'defend,'[9] 'guard,'[10] and 'maintain'[11] them, or prevent them from being 'disturbed,'[12] particularly against the *refragatio* of the 'wicked.'[13]

'paternal *provisio*' (no. 181); all other instances occurred in the phrase 'paternal solicitude.' Occasionally reference was made to the papal 'government,' as *regimen* or *moderamen* (Appendix 1, no. 3, 24, 29, 48, 57, 69, 70, 90, 152, 153, 171, 194, 219, 274), or *administratio* (no. 1, 56, 74, 75, 76, 77, 215, 225, 241, 242, 243, 244, 267, 269).

[1] For the papacy to 'correct the bad,' see, Appendix 1, no. 56, 243, 267; see also, no. 187, 260; to 'confirm things done rightly' or 'well,' see, no. 1, 56, 225, 267; see also, no. 127, 149, 167, 187, 252; or to 'arrange the right,' see, no. 1. For the papacy having been set up in the 'watchtower (*specula*)' of the Church, see, Appendix 1, no. 74, 75, 76, 77, 215, 269. See also, e.g., among numerous examples concerning the temporal sphere, Appendix 1, no. 26, 28, 42, 54, 68, 124, 126, 217.

[2] See, Appendix 1, no. 91, 156, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 169, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 249, 256. More specifically in such contexts, the papacy was obliged to provide for the *quies*, the *necessitates*, *opportunitates*, or *utilitates* of the churches or clergy, to preserve their *ius*, *iustitia*, or *dignitas*; or to 'esteem' or 'foster' them: see, (for *quies*) Appendix 1, no. 45, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73. 84, 130, 141, 164, 166, 174, 176, 177, 178, 184, 275; (for *necessitates*, *opportunitates*, and *utilitates*) no. 8, 31, 32, 33, 34, 35, 36, 45, 55, 57, 58, 62, 65, 66, 67, 68, 69, 70, 95, 130, 171, 178, 194, 197, 206, 263, 272; (for *ius*) no. 17, 38, 42, 44, 105, 160, 197, 207, 222, 233, 234, 237, 255, 260, 266, 291; (for *iustitia*) no. 37, 38, 39, 43, 76, 95, 123, 181, 208, 209, 211, 217, 235, 244, 246, 261, 287, 291; (for *dignitas*) no. 37, 39, 40, 41, 43, 197, 266; (for to 'esteem') no. 14, 31, 32, 34, 41, 42, 48, 58, 63, 66, 76, 82, 104, 156, 170, 184, 189, 194, 207, 208, 209, 211, 263, 272, 284, 287, 289, 291, 292; (for to 'foster') no. 14, 29, 31, 32, 34, 58, 82, 85, 156, 194, 207, 208, 284, 290.

[3] See, Appendix 1, no. 47, 48, 49, 50, 51, 53, 54, 55, 61, 64, 74, 90, 146, 158, 167, 171, 172, 173, 175, 178, 182, 185, 197, 207, 209, 211, 218, 243, 254, 256, 257, 272, 277.

[4] See, Appendix 1, no. 1, 46, 54, 74, 173, 185, 209, 211, 277; see also, no. 68.

[5] See, Appendix 1, no. 45, 46, 49, 56, 146, 165 (remain in their *vigor*), 166, 167, 171, 174, 180, 182, 184, 194, 242, 246, 249, 252, 254, 257, 267, 269, 270.

[6] See, Appendix 1, no. 47, 48, 49, 50, 51, 54, 55, 61, 72, 167, 169, 173, 175, 178, 179, 182, 183, 185, 241, 243, 256, 263.

[7] See, Appendix 1, no. 25, 28, 45, 46, 50, 51, 54, 60, 158, 166, 169, 173, 174, 175, 176, 177, 178, 179, 180, 183, 184, 190, 191, 192, 194, 228, 252, 277.

[8] See, Appendix 1, no. 38, 44, 60, 61, 62, 65, 67, 68, 84, 87, 188, 264; see also, no. 7, 146, 171, 172, 254.

[9] See, Appendix 1, no. 7, 29, 30, 38, 82, 90, 189, 198, 199, 200, 201, 202, 202a, 202b, 202c, 205, 206; concerning others' duty vis-à-vis the same, see, no. 281, 289, 290.

[10] See, Appendix 1, no. 41, 233, 234, 246, 260, 266, 280.

[11] See, Appendix 1, no. 42, 246, 291.

[12] See, Appendix 1, no. 7, 28, 30, 45, 49, 50, 51, 72, 84, 85, 87, 137, 138, 139, 140, 141, 161, 174, 175, 176, 177, 179, 180, 183, 185, 252, 253.

[13] See, Appendix 1, no. 28, 29, 38, 45, 49, 52, 53, 61, 72, 82, 84, 85, 86, 90, 137, 138, 139, 140, 141, 157, 166, 172, 174, 175, 176, 177, 179, 180, 183, 185, 252, 253, 281, 289, 290. Similarly, the pope was commonly concerned for the 'peace and quiet' or 'tranquillity' of the churches and ecclesiastical things: see, Appendix 1, no. 12, 13, 57, 58, 59, 61, 63, 68, 69, 70, 77, 84, 156, 161, 164, 170, 172, 176, 177, 180, 182, 184, 220, 221, 222, 237, 240, 245, 246, 247, 250, 251, 258, 262, 264; or for their 'quiet and utility:' see, no. 45, 62, 65, 66, 67, 130, 178. At the same time, there was a not infrequently marked concern for 'venerable' places or persons: see, Appendix 1, no. 4, 29, 31, 34, 42, 49, 50, 51, 52, 53, 55, 58, 63, 72, 73, 83, 84, 85, 86, 156, 197, 287, 290. For various other relatively salient terms or phrases, there was, *inter alia*: papal or apostolic 'mercy/clemency (*clementia*)' (Appendix 1, no. 37, 39, 40, 43, 48, 63, 101, 123, 295; see also, no. 6, 35, 60, 61, 94, 100, 101, 103, 108, 110, 123, 175, 179, 183, 208, 218, 220, 229, 243); the 'unity' of the

Some of this terminology and rhetoric, at least, had gradually become conventional by 1143, some having long been a part of the rhetoric of the Gregorian papacy.[1] Almost nothing, however, has been written on papal *arengae* in the twelfth century. H. Fichtenau, who undertook the most concerted work on medieval *arengae*,[2] wrote briefly that there were certain noticeable shifts in practice under Urban II and Calixtus II so that new virtues entered the papal catalogue, such as *discretio*,[3] while simultaneously a greater emphasis was placed on *caritas*, more 'in line with the "modern" thinking of this time.' At the same time, he noted, the *arengae* began to emphasise new concepts such as papal *liberalitas*—absent in the examples of 1143-53—which was interchanged seemingly randomly with *benignitas*[4] or *humilitas*[5] in a way that betrayed a lack of precision in the overall use of terminology: 'ein Zeichen dafür, wie wenig es auf den exakten Sinn der Begriffe ankam.'[6] What does seem clear is that by the mid-twelfth century such 'newer virtues,' especially *caritas* and the like, had thoroughly eclipsed the older 'political,' 'magisterial,' or even 'personal' topoi of earlier eleventh-century examples. And notions of *ratio*, *aequitas*, and *iustitia* had become predominant as expressions of the bases of papal governance.[7] The specific subject-matter as well as the exceptional forms of the various *arengae* of the letters of the period 1143-53 will be taken up at length in greater detail as they pertained to the various aspects of ecclesiastical and papal administration. Ultimately, however, one is able to conclude very little on the comparative nature of papal *arengae* in the twelfth century given the complete dearth of comparative comprehensive analyses or surveys of the specific forms and incidence of *arengae* employed in pontificates preceding or succeeding the decade 1143-53. Fichtenau himself devoted only a handful of pages in his study to the eleventh and twelfth-century papacy and chancery, providing only isolated specific examples. What is perhaps most important here, for the present study, is not so much the actual types or wording of *arengae* used as the consistency of their tone and terminology: without an immediate imperial threat to its political situation, and with the

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church (no. 87, 264); 'charity (*caritas*)' (no. 5, 9, 11, 14, 25, 35, 92, 99, 104, 156, 157, 159, 163, 191, 203, 207, 208, 210, 212, 216, 220, 240, 243, 249, 266, 269, 274); the 'union/unity' of charity (no. 191, 207, 220, 243); *studium* (no. 8, 25, 26, 52, 86, 94, 163, 164, 210, 212, 214, 216, 219, 268, 284; as adjective, see, no. 27, 31, 190, 268, 270); and *illibata*, in reference to the obligation to preserve churches' rights or goods 'undisturbed' or 'unstolen' (no. 35, 38, 44, 165, 167, 182, 207, 222, 233, 234).

[1] See, e.g., Gregory VII, *Das Register Gregors VII.*, ed. E. Caspar (*MGH Epistolae selectae* 2: Berlin, 1920-), Bk. 1. XV. 24, Bk. 2. LXVIII. 226, Bk. 5. II. 350, Bk. 6. XII. 415, Bk. 9. VI. 581, cited by I.S. Robinson, 'Reform and the Church, 1073-1122,' *The New Cambridge Medieval History* 4/1, ed. D. Luscombe and J. Riley-Smith (Cambridge, 2004), 268-334, here at, 274, see also, 275, 322; *PL*, Urban II, no. 10, col. 293-94 (JL, 5375); see, H. Fichtenau, *Arenga: Spätantike und Mittelalter im Spiegel von Urkundenformen* (Graz, 1957), 108-10, for other examples.

[2] H. Fichtenau, *Arenga*, ch. 2, esp. 101-112.

[3] See, for the occurrence of *discretio* in the *arengae of* 1143-53, see, Appendix 1, no. 18, 91, 232, 266, 275.

[4] See, for the occurrence of *benignitas* in the *arengae* of 1143-53, see, Appendix 1, no. 29, 55, 101, 130, 159, 161, 295.

[5] See, for the occurrence of *humilitas* in the *arengae* of 1143-53, see, Appendix 1, no. 99, 215, 220, 238.

[6] H. Fichtenau, *Arenga*, 108.

[7] See, ch. 3.2 and 7.2.

general recognition of its primacy as well as the basic *libertas* of the churches, the curia, with few exceptions, did without the older political and metaphysical imagery and responded to the needs of the churches and churchmen for the most part in simple and even discreet terms as their implicit protector, provider, and arbiter.

1.2 EXPRESSIONS OF PAPAL PRIMACY

The theoretical basis of the papacy's right to meet in all cases the demand of business brought before it consisted in the authority of its unique primacy over all of the churches of the world. The *De consideratione* of Bernard of Clairvaux announced to the pope that he was 'the high priest, the supreme pontiff; the prince of the bishops; the heir of the apostles; in primacy you are Abel, in governing you are Noah, in patriarchate you are Abraham, in orders you are Melchisedech, in dignity you are Aaron, in authority you are Moses, in judgement you are Samuel, in power you are Peter, by anointing you are Christ.'[1] Later, Bernard again assured the pope that he was 'the vicar of Christ' on earth, a designation which would be increasingly invoked in the second half of the twelfth century, finding its fullest expression under Innocent III as the basis for a divinely derived and absolute papal monarchy.[2] In this, however, Bernard for once was ahead of actual papal practice, as the actual phrase *vicarius Christi* appeared only twice in the extant papal documents of the period 1143-53 in both instances referring to the nature of the episcopal office.[3] The closest the pope actually came in this period to applying to himself the appellation of 'vicar of Christ' occurred in a letter of April 1153, granting one-quarter of the offerings of the altar of St. Peter's,

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[1] *De consideratione*, Bk. 2. VIII. 15 (66).

[2] *De consideratione*, Bk. 4. VII. 23 (138).

[3] *PL*, Eugene III, no. 199, 465. Writing to the count of Anjou in mid-1147, concerning his barons who were unjustly occupying the goods of the bishop of Bayeux, Eugene instructed him to honour the same bishop as people in positions of power in the world were required by God to show honour 'especially for ecclesiastical persons who occupy His *vicis* in the Church.' PUF2, no. 50. See, however, *HP*, 80-82 (*IP* 8, *46/175; *IP* 9, *172/1), in which John of Salisbury quoted Eugene referring to himself as 'Peter's successor and the vicar of Christ.' In total, the mere term *vicarius* was used rarely in these letters. The cardinal-bishop Conrad of Sabina was referred to as papal 'vicar' of Eugene III at Rome during the pope's exiles from the City in at least five different letters between May 1147 and July 1151: *IP* 1, 80/6 (5/24/47); *IP* 4, 71/28 (11/27/47); *IP* 1, 51/6 (8/30/48); Nachträge zu den römischen Berichten, no. 8 (*IP* 1, 141/31) (7/13/51); PU in Campanien, no. 10 (*IP* 2, 147/4) (7/23/51); see also, *IP* 2, *147/2 (Anno 1145-51); see also, on this cardinal, *PL*, Lucius II, no. 40; *IP* 3, 4/14; *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14). In a singular example, a cardinal legate to Poland, Cardinal-deacon Guido(4) de Crema of S. Maria in Porticu, was described as carrying the papal *vicis* in his legation, 'just as a vicar of the apostolic see:' *PL*, Eugene III, no. 319. Otherwise, in at least three letters the pope referred to non-papal *vicarii*: separate letters of Lucius II (*EPRI*, no. 190 [JL, 8612]) and Eugene III (PUF2, no. 33) made stipulations regarding the bishop of Bayeux's 'vicar;' and another letter, from 1148, did likewise regarding the 'vicar' of the abbot of Cluny:' *PL*, Eugene III, no. 256 (*IP* 7/1, 339/42; JL, 9189). See also, *IP* 7/2, *104/3, *104/4. *EPRI*, no. 190 (JL, 8612) was one in a series of over twenty similar letters issued under Lucius II and Eugene III concerning the recovery of the episcopal possessions of the church of Bayeux; on this, see also, PUF2, no. 19, 22, 24, 31, 32, 33, 34, 36, 37, 41, 42, 46, 50, 57, 58, 67, 68, 69, 70, 71. The bishop also received at least three privileges of protection in this period: PUF2, no. 23, 30, 64.

Rome to the canons of that church, in which the pope declared that *nos, qui licet indigni Christi vices in terris agimus...*[1] This usage, in fact, occurring only months before Eugene III's own death, and probably after the transmission of *Book Four* of the *De consideratione*, has been cited as the first known occurrence in the papal documents of the twelfth century of the formula *vicarius Christi*.[2] The letter itself, however, directed to the canons of St. Peter's, was not intended to leave the Roman Church *per se*, while the term *vicis* (gen.) itself, as opposed to *vicarius*, was used several times throughout the letters of the period 1143-53, and variously, and in no other instances in a similar context:[3] conversely, on several occasions the pope referred to the non-papal *vicis* of others.[4]

On the *plenitudo potestatis*, Bernard of Clairvaux similarly pointed out to the pope that, according to his 'own canons,' others were called to share a part of the responsibility for souls, a *pars sollicitudinis*, but only the pope was 'called to the fulness of power.'[5] Neither phrase, however, *plenitudo potestatis* or *pars sollicitudinis*, despite the long history of their dichotomy,[6]

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[1] *PL*, Eugene III, no. 577.

[2] See, M. Maccarrone, 'Il papa "*vicarius Christi*:" testi e dottrina dal sec. XII al principio del XIV,' *Miscellanea Pio Paschini: Studi di storia ecclesiastica* 1 (*Lateranum*, n.s. 14/1-4: Rome, 1948-), 429-500, here at, 439-40; I.S. Robinson, 'The Institutions of the Church, 1073-1216,' *The New Cambridge Medieval History* 4/1, ed. D. Luscombe and J. Riley-Smith (Cambridge, 2004), 368-460, here at, 370.

[3] For instance, as noted above, in the absence of papal chancellors, their deputies operated, according to the *datum* clauses of papal documents, with their *vicis*. Otherwise, in a privilege of protection for the bishop of Bologna, Lucius II stated that the papacy governs the Church 'supported by the *vicis* of the apostles:' *Hoc enim certissime credimus quod quanto studiosius ecclesiarum exaltationem procuramus, tanto dignius illius vigemus munificentia cujus spirituali cura regitur et gubernatur catholica et apostolica Ecclesia in qua, auctore Deo, apostolorum vice fungimur*. *PL*, Lucius II, no. 34. In another privilege of protection, Eugene III likewise stated that 'we exercise the *vicis* of St. Peter.' *PL*, Eugene III, no. 407; see also, similarly, Nachträge zu den PU in Italiens 8, no. 4 (*IP* 6/2, 230/3); see also the spurious privilege of protection: *PL*, Eugene III, no. 592. In other letters, with regard to the Polish legation noted above, a cardinal legate was described as carrying the papal *vicis* in his legation. *PL*, Eugene III, no. 319. On at least four other occasions, on the other hand, Eugene commissioned provincial bishop delegates to act 'with our [papal] *vicis*:' *PL*, Eugene III, no. 37, 414, 429, 524.

[4] See, *APRI* 2, no. 382 (JL, 8654), under Lucius II, referring to the *vicis* of the canons of S. Ambrogio, Milan. In a letter to Abbot Suger of St. Denis, Eugene III noted that the French regent 'is recognised to exercise the royal *vicis* in the lands of the Gauls:' *Verum, quia vices regias in Galliarum partibus dignosceris exercere*. *PL*, Eugene III, no. 297. See also, PUF2, no. 50.

[5] *De consideratione*, Bk. 2. VIII. 16 (67-68).

[6] Pope Leo I used them to define the relationship between the pope and his own vicar. And while the *Decretum* of Master Gratian, ca. 1140, used it only in the context of the metropolitan's jurisdiction over against his suffragans (Gratian, *Decretum*, C. 9 q. 3 d. a. c. 1), eventually, by the end of the twelfth century, the doctrine became current distinguishing the degrees of *sollicitudo* and thus authority exercised by the pastors of the Church, each derived from God: that of bishops limited in geographical scope, the *pars sollicitudinis*, and that of the pope exercised over the Church Universal, the *plenitudo potestatis*. On *vicarius Christi*, *plenitudo potestatis*, and *pars solicitudinis*, see, K. Pennington, *Papal Monarchy*, esp. 43-74; M. Maccarrone, *Il papa* 'vicarius Christi,' 429-500; M. Maccarrone, Vicarius Christi: *Storia del titolo papale* (*Lateranum*, n.s. 18/1-4: Rome, 1952), esp. 135-40; J. Rivière, "'*In partem sollicitudinis...*:" évolution d'une formule pontificale,' *Revue des sciences religieuses* 5 (1925), 210-31; R.L. Benson, '*Plenitudo potestatis*: Evolution of a Formula from Gregory IV to Gratian,' *Studia Gratiana* 14 (1967), 193-217; B. Jacqueline, 'Bernard et l'expression "*plenitudo potestatis*,"' *Bernard de Clairvaux* (Commission d'histoire de l'Ordre de Cîteaux 3: Paris, 1953), 345-48; R.L. Benson, *The Bishop-Elect: A study in Medieval Ecclesiastical Office* (Princeton, 1968), 77, 84-85, 98, 167, 172-73, 258, 285, 306, 350, 381-84, 394; G.B. Ladner, 'The Concepts

occurred anywhere in the papal letters of 1143-53, despite the frequent reference to papal and episcopal *sollicitudo*, especially in the *arengae*.[1] Indeed, as the letters of this period indicated, broadly, the papal curia at mid-century, though certainly conscious of the pope's claims and rights to the unique primacy, seldom found need to propound the basis of such, and was rather clearly not prepared to advance in any certain terms the claim of Innocent III that all jurisdiction derived from the pope.[2] Conversely, for an even earlier period, it has been noted that from the pontificate of Urban II, and especially under the influence of the chancellor-cardinal John of Gaeta (1089-1118), the future Pope Gelasius II, and even more so under Innocent II, the pope exploited the opportunity of issuing privileges by consistently opening them with a 'primacy-*arenga*.'[3] But, while certainly with even a rough familiarity with Innocent II's letters one cannot help but be struck by the consistently vehement, imperious, and elaborate declarations of his papacy's eminent place in hierarchy of the Church, much of this almost surely was a result of the papal schism of 1130 and the competition this bred between the rival papal *curiae*. Conversely, therefore, while there was a continuing tradition of *arengae* employed under Innocent II into the pontificates of his immediate successors, an actual comprehensive analysis of the *arengae* of Celestine II, Lucius II, and Eugene III reveals that, in the general ecclesiastical peace which followed after 1143, their tendency was to diminish the vehemence, elaborateness, and overall incidence of any such explicitly theoretical and magisterial *arengae* and rather to regard papal primacy as something self-evident, largely in the subtler context of the pope's pre-eminent duty to care or provide for or maintain all of the churches. Indeed, the period 1143-53 provided only isolated if somewhat significant exceptions to this general rule.[4]

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of "*Ecclesia*" and "*Christianitas*" and their Relation to the Idea of Papal "*plenitudo potestatis*" from Gregory VII to Boniface VIII,' *Sacerdozio e regno da Gregorio VII a Bonifacio VIII* (*Miscellanea historiae pontificae* 18: Rome, 1954), 49-78; I.S. Robinson, *Papacy*, 92, 120, 182-87; I.S. Robinson, *Institutions*, 370-73; J.A. Watt, *The Theory of Papal Monarchy in the Thirteenth Century* (London, 1965), 43, 76-77, 84; N. Zacour, 'The Cardinals' View of the Papacy, 1150-1300,' *The Religious Roles of the Papacy: Ideals and Realities, 1150-1300*, ed. C. Ryan (Toronto, 1989), 413-38, here at, 420; G. Silano, 'Of Sleep and Sleeplessness: The Papacy and Law, 1150-1300,' *The Religious Roles of the Papacy: Ideals and Realities, 1150-1300*, ed. C. Ryan (Toronto, 1989), 343-61, here at, 344-45; E. Kennan, *Traditio* 23, 95-106; R.W. Southern, *Western Society and the Church*, 104; W. Ullmann, *Short History of the Papacy*, 183.

[1] See, ch. 1.1.

[2] On Innocent III, see, especially, K. Pennington, *Papal Monarchy*, esp. 13-74.

[3] See, I.S. Robinson, *Reform*, 274-75; I.S. Robinson, *Papacy*, 206, 231-32; H. Fichtenau, *Arenga*, 109-10; K.W. Nörr, *Jurisprudence*, 330.

[4] See, chiefly, Appendix 1, no. 164, 197, 231, 241, 263-74; see also, Appendix 1, no. 1, 2, 3, 25, 26, 29, 37, 38, 39, 40, 41, 42, 43, 44, 59, 60, 61, 62, 63, 66, 67, 68, 71, 74, 75, 76, 77, 78, 84, 91, 101, 130, 156, 161, 163, 164, 166, 167, 169, 171, 174, 175, 178, 179, 181, 182, 183, 184, 188, 194, 197, 208, 210, 212, 213, 214, 215 (the legation of Christ), 216, 217, 219, 222, 225, 233, 234, 235, 240, 250, 251, 256, 258, 260, 262, 275, 293, 295. Cf., the *arengae* classified under 'resistance.' On papal primacy and the following, see, e.g., W. Ullmann, *Growth*; K. Pennington, *Papal Monarchy*; K. Froehlich, 'Saint Peter, Papal Primacy, and the Exegetical Tradition, 1150-1300,' *The Religious Roles of the Papacy: Ideals and Realities, 1150-1300*, ed. C. Ryan (Toronto, 1989), 3-44; W.H. Principe, 'Monastic, Episcopal, and Apologetic Theology of the Papacy, 1150-1250,' *The Religious Roles of the Papacy: Ideals and Realities, 1150-1300*, ed. C. Ryan (Toronto, 1989), 117-70; W.H. Principe, 'The School Theologians' Views of the Papacy, 1150-1250,' *The*

As an example of such exceptional *arengae*, in October 1147 Eugene III issued a summons to the province of Salzburg for an upcoming general council of the Church, ultimately convened at Reims on 21 March 1148,[1] justifying his right to do so with the single most emphatic declaration of papal primacy from this period. The summons opened:

> It is unquestioned and undoubted and the whole of Christendom throughout the world recognises that He alone, who committed to St. Peter, the key-holder of the Heavenly Kingdom, the various rights of the earthly and celestial *imperium* at the same time, has founded the holy mother and apostolic Roman Church and chosen to erect it upon a firm and immobile rock of faith. For, it does not function through the privilege of any earthly judgement whatsoever, but through the word of Him, by whom Heaven and Earth have been constructed; and by His authority alone it is supported. For, the sublimity of divine counsel has thus arranged that the holy Roman Church, as we have mentioned already, should be pre-eminent over all of the churches throughout the world with a permanent preference (*praelatio*) in our head, the Lord Jesus Christ, just as a wonderful structure emerging upon the most solid foundation, and should zealously tend to emerging heresies and other wicked things, errors, and pollutants which ought to be checked by it itself...[2]

Curiously, however, only a day earlier a far simpler and more benign summons had been issued to the bishop of Olomouc:[3] 'We trust greatly concerning your esteem and fidelity, as before now we have come to know it through experience in the business of the Roman Church. Since we have decreed to celebrate a council in the trust of the Holy Spirit...on account of the many enormities which have surfaced which must be repelled, and on account of the things which must be confirmed which would be pleasing to God, we have arranged to convoke our brother archbishops, bishops, and other prelates of the churches from the various parts of the world.'[4] Otherwise, the summons for the province of Salzburg, despite the considerable differences in *arengae*, included an almost identical *narratio* and enacting clause; while both letters also commended to the bishops papal officials, a chaplain and subdeacon, respectively. As such, because of the general similarities of the two summons—the only two extant summons for the council—the difference in the tone of the *arengae* is difficult to explain merely by accident of scribal preferences or style: it was perhaps, as the *arenga* to the bishop of Olomouc declared, only that the pope indeed had already sufficient 'trust' in that bishop that such a peremptory reminder of Rome's authority seemed unnecessary. In fact, over two months later Eugene would grant the bishop of Olomouc a dispensation from the summons through 'the accustomed kindness of the apostolic see.'[5] In any

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Religious Roles of the Papacy: Ideals and Realities, 1150-1300, ed. C. Ryan (Toronto, 1989), 45-116; B. Tierney, *Foundations of the Conciliar Theory* (Cambridge, 1955), 25-33; R.L. Benson, *Bishop-Elect*, 47-49, 72-74, 85, 88.

[1] On the dates of the council, which closed probably on 1 April, perhaps earlier, see, N. Häring, *Notes*, 44-46.

[2] Appendix 1, no. 268 (JL, 9149 [complete text] [*PL*, Eugene III, no. 232]). According to N. Häring, the imperious language of this particular papal summons resulted merely from the papal need to assure the council's success 'in a community absorbed and distracted by an enthusiastic devotion' to the enterprise of the Second Crusade, which thereby compelled the pope to resort 'to threats and application of canonical sanctions rather than to gentle persuasion or invitation.' N. Häring, *Notes*, 58.

[3] In the papal letters, this bishop was always addressed as 'the Moravian bishop.'

[4] The essentially same clauses of this sentence also appeared in the summons for the province of Salzburg, immediately following the *arenga*. *PL*, Eugene III, no. 231.

[5] *PL*, Eugene III, no. 241.

event, it was thus suggested that a common form of summons was not circulated uniformly to all prospective attendees.

Six months later the pope would write to the canons of St. Geneviève, Paris: 'Whoever is recognised to hold the truth of the Catholic faith and the charity of true religion does not doubt that the head of all churches is the holy Roman Church, but he affirms and venerates it just as a devout son.'[1] All remaining similar examples of distinct 'primacy *arengae*' in the letters of the period 1143-53 came from the period after 1151 when concerns surrounding the territorial and political 'policies' of the curia had become especially acute, especially with the accession of the future emperor Frederick I. Thus, upon the news that King Conrad III of Germany had at length resolved to undertake a coronation expedition into Italy, fraught with all of the natural trepidation over any imperial military campaign into the heart of the papal Patrimony, Eugene wrote in July 1152 to all of the bishops and noblemen of *Alemannia* in a singular pronouncement on the doctrine of the two swords, adhering conservatively however to the Gelasian tradition of *Duo sunt*,[2] which attributed to the *regnum* possession of the material sword and to the *sacerdotium* possession of the spiritual:[3] 'Just as principally two precepts of charity have been devised by the Rector, God, for the weal of the human race, so also two have been constituted by Him by which this world is to be governed, namely, the sacred authority of popes and the imperial power; if which two come together well, mutually, and consist with the integrity of their honour, a religion secure and sacred in God is preserved in the holy Church of God, and the Christian populace is beneficially governed as much by the vigour of justice as by the rudder of equity.'[4]

In April 1153 Eugene wrote to the cardinal-priest Bernard of S. Clemente and the archpriest and canons of St. Peter's, Rome opening with a lengthy exegesis on the double apostolicity of papal primacy: 'The company of SS. Peter and Paul is so very illustrious and glorious that the two are both the doctors of the nations, the originators of the martyrs, the princes of priests, and although they distinguish themselves among all of the apostles together with a, so to speak, special prerogative, they do not feel the effects of a disparity of equality in merit in Heaven.' The *arenga* thus elaborated on the various qualities of the two apostles, declaring that,

> The keys of the kingdom of the heavens have been committed to Peter by the Saviour Himself, our Lord, Jesus Christ. Paul has been elected by God so that out of the multitude of nations he might fill the kingdom of the heavens through his proclamation. Peter is the rock and foundation of the faith, and so that we may not fall, he sustains us in lasting solidity; Paul, so that we may not be wounded by the wicked dogma of heretics, arms us with the honesty of mortal men and the invincible reason of the faith. Peter, holding the principate, looses and binds from this power; Paul, is the diligent

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[1] Appendix 1, no. 269 (*PL*, Eugene III, no. 298).
[2] The text appeared in *Gelasii papae I epistolae et decreta*, *PL* 59, no. 8, col. 41-47; it was also partially copied in the second recension of the *Decretum* of 'Gratian II,' see, Gratian, *Decretum*, D. 96 c. 10; A. Winroth, *The Making of Gratian's* Decretum (Cambridge, 2000), 204.
[3] For a review of the topic of the two swords, see, B. Tierney, 'Some Recent Works on the Political Theories of the Medieval Canonists,' *Traditio* 10 (1954), 594-625; S. Chodorow, *Gratian*, 54-64, 223-46.
[4] Appendix 1, no. 274 (*PL*, Eugene III, no. 484).

> intervener...and fortifies us with his wonderful exhortation. Peter is our foundation and house of fortitude, and in his faith we have been planted and have struck root; Paul, the vessel of election, has called those predestined by God and the elect with the sound of the celestial trumpet; and pleading for our sake without cessation so that we might not deviate from the faith or truth, he protects us by intervening before God.[1]

This was the same *arenga* that associated the pope with the *vicis Christi*.[2] But again, as noted, in this particular case the rhetorical extravagance and unusual length of the *arenga* might be explained on the basis that the letter itself, which granted a quarter-part of all offerings made at the altar of St. Peter's to that church's own chapter of canons, stayed within the papal *familia* of the Roman Church.

Looked at broadly, more or less direct reference to the pope's primacy was insinuated, beyond these particular letters, through the occurrence of certain terminology in the *arengae*. The term 'apostolic see,' for instance, appeared in at least fifty-five further *arengae*;[3] *apostolatus*, as in 'the office of the apostolate enjoined upon us by God,' occurred in thirteen;[4] the 'Church Universal,' eight;[5] the term 'Catholic Church,' five;[6] the Roman Church as the embodiment of St. Peter, eight;[7] the papacy as 'having been set up in the watchtower (*specula*) of the Church,' six;[8] the Church in anthropomorphic imagery, with Rome as its 'head (*caput*),' two;[9] St. Peter as the prince of the apostles, three;[10] and the 'unity' of the Church, two.[11] The metaphor of St. Peter or

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[1] Appendix 1, no. 272 (*PL*, Eugene III, no. 577).
[2] Appendix 1, no. 272 (*PL*, Eugene III, no. 577).
[3] See, Appendix 1, no. 1, 2, 37, 39, 40, 41, 43, 47, 49, 53, 56, 63, 64, 68, 72, 75, 77, 78, 85, 98, 101, 123, 150, 152, 153, 161, 167, 171, 175, 178, 179, 181, 182, 183, 187, 194, 197, 207, 209, 211, 212, 213, 215, 219, 222, 233, 234, 247, 249, 254, 256, 257, 271, 295, 297. The adjective *apostolicus* appeared an additional fifteen times, see, Appendix 1, no. 29, 48, 50, 51, 71, 74, 78, 84, 101, 164, 191, 207, 235, 263, 295.
[4] See, Appendix 1, no. 25, 42, 44, 163, 171, 208, 210, 212, 213, 214, 216, 250, 262.
[5] See, Appendix 1, no. 3, 29, 71, 171, 214, 217, 270, 279.
[6] See, Appendix 1, no. 163, 213, 214, 216, 222, see also above, no. 269, which referred to the 'Catholic faith;' see also, Appendix 1, no. 76, 284, 290, 292, which referred to 'Catholic princes.'
[7] See, Appendix 1, no. 76, 77, 163, 197, 207, 267, 269, 270.
[8] See, Appendix 1, no. 74, 75, 76, 77, 215, 269.
[9] See, Appendix 1, no. 214, 232. Body imagery is potentially problematic, open to various interpretations: it could be used to support either primacy or corporate and conciliar doctrines; see, e.g., K. Pennington, *Papal Monarchy*, 49-56; B. Tierney, *Foundations*, 28-30, 132-53; B. Tierney, 'Hostiensis and Collegiality,' *Proceedings of the Fourth International Congress of Medieval Canon Law*, ed. S. Kuttner (Vatican City, 1976), 401-09; G.B. Ladner, 'Aspects of Medieval Thought on Church and State,' *Review of Politics* 9 (1947), 403-22, here at, 413; N. Zacour, *Cardinals' View*, 418; W. Ullmann, *Growth*, 442.
[10] See, Appendix 1, no. 77, 197, 270. W. Ullmann averred that the jurisdictional and magisterial primacy of the Roman Church derived from its 'double apostolicity.' W. Ullmann, *Growth*, 5. Indeed, the invocation of this 'double apostolicity' as the basis of papal authority was not uncommon in the letters of this period. The most common anathema clause, occurring regularly in the letters, stressed that, 'Therefore, if anyone knowing the page of this our confirmation should attempt to come temerariously against it, he will have known himself about to incur the wrath of Omnipotent God and His blessed apostles, Peter and Paul;' or, 'Therefore, if anyone, knowing the page of this our definition and confirmation, should temerariously presume to come against it, having been warned a second or third time, if he should not correct his guilt with a congruous satisfaction, let him incur the wrath of Omnipotent God and His blessed apostles, Peter and Paul, and be subjected to a harsh vengeance at the Last Judgement;' or 'Moreover, if anyone knowing this page of our confirmation should temerariously attempt to come against it, having been warned a second or third time, if

Rome as the 'rock' of the Church occurred in three further *arengae*,[1] and in one additional letter.[2] And the papal possession of the 'keys (*claves*)' to Heaven was alluded to in one further *arenga*,[3] and in three additional letters.[4] In one of these letters, the pope assigned the keys of Heaven to all priests. In February 1153 Eugene reprimanded the duke of Normandy for failing to honour the sentences of the bishop of Bayeux against certain of his nobles who had violated the church of Bayeux's monopoly on markets. In so doing, the pope informed the duke, he was 'both proving to be negligent in giving heed to the fear of divine judgement and you contemn the keys of the Church which divine providence has committed to St. Peter and those who after him should succeed in the grade of the priesthood. Accordingly, we shudder, lest you are reckoned to be one of their number concerning whom the Lord said, they made kings, but not by my authority; they established princes, but without my approval.' The letter thereby ordered the duke to assist the bishop 'in his justice,' and 'observe without any opposition the canonical punishment of him and all of the prelates of the Church.'[5] In another letter, to the mystic Hildegard of Bingen, Eugene referred specifically to the 'key of knowledge (*scientia*):' 'We marvel, oh sister, and indeed we marvel that beyond that which can be believed God is displaying new miracles now in our time, that He so imbues you with His Spirit that you are said to see, understand, and reveal many secrets. But we have understood this to be so from reliable persons who acknowledge that they have both seen and heard you. But what might we, who hold the key of knowledge so that we are able to open and close, avail to respond

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he should not make amends with a fitting satisfaction, let him be deprived of the dignity of his power and honour and incur the wrath of Omnipotent God and His blessed apostles, Peter and Paul.' In a few other instances, when granting an indulgence, justified on the basis of the theory of the 'treasury of the Church,' the clause appeared which stipulated that the indulgence was duly granted, 'trusting in the merits of the blessed apostles, Peter and Paul;' see, e.g., *PL*, Eugene III, no. 47, 194, 369, 444, 484; JL, 8821 (see, *APRI* 1, no. 201 [JL, 8829]), 9383 (see, PUTJ1, no. 8); *APRI* 1, no. 201 (JL, 8829); PUTJ1, no. 8 (JL, 8478), 9 (see, PUTJ1, no. 8), 11 (see, PUTJ1, no. 8); PUKHL, no. 63 (PU in Malta, no. 3); PU in Malta, no. 2 (see, PUTJ1, no. 8); PU in Sizilien, no. 3 (see, PUTJ1, no. 8); PUF4 Nach. Gott., no. 22. Innocent II had between 1130 and 1139 already used the same clause on numerous occasions; see, e.g., *PL*, Innocent II, no. 30, col. 77-79, no. 55, col. 104-05, no. 70, col. 114-15, no. 80, col. 119-21, no. 84, col. 123-25, no. 89, col. 127-28, no. 91, col. 129-30, no. 292, col. 228-29, no. 393, col. 451-52. In the period 1143-53, in a singular instance, a letter notified two prelates that the pope was taking a certain church under the protection of both of the 'blessed apostles, Peter and Paul' (PUN, no. 62), whereas it was quite standard for the protection clause in any privilege to receive the house under the protection of 'Peter' only. On a few other occasions, a letter invoked the authority of both apostles, Peter and Paul; e.g.: 'Further, we have ordered with the authority of the blessed apostles, Peter and Paul, so that...;' see, *PL*, Eugene III, no. 463/545 (*Decretales*, Gregory IX, Bk. 5. XVII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4; JL, 9508/9656); PUF6, no. 62; PUKHL, no. 63 (PU in Malta, no. 3); Nachträge zu den PU in Italiens 5, no. 10 (*IP* 5, 477/26).

[11] See, Appendix 1, no. 87, 264.

[1] See, Appendix 1, no. 164, 197, 270.

[2] *PL*, Eugene III, no. 523 (Otto of Freising, *Gesta*, 120-22; JL, 9605).

[3] See, Appendix 1, no. 267.

[4] *PL*, Eugene III, no. 466; PUF2, no. 71; St. Hildegard of Bingen, *Letters*, col. 145. On the emerging doctrine of penitence and compulsory confession from the late eleventh century, and especially with regard to the special and exclusive role of the priest, see, W. Ullmann, *Growth*, 374-78; S. Chodorow, *Gratian*, 168, 172; R.L. Benson, *Bishop-Elect*, 48.

[5] PUF2, no. 71.

about such things, and do we prudently neglect to do so through ignorance?'[1]

The key of knowledge (*scientia*) was generally thought of as the discretionary judgement which determined who would be bound and who loosed, as opposed to the other key of power (*potestas*) which enforced judgement. Both, however, would come to be considered to be possessed not merely by the pope—who indeed possessed the original and extraordinary keys—but by all ordained priests, especially in their penitential duties.[2] This was the sense in which Eugene referred to the keys to the duke of Normandy—which keys the bishop of Bayeux had used to excommunicate his own criminal enemies. Similarly, R.L. Benson pointed out how under Gratian's thought,[3] which supported the Petrine donation of the keys, the key of knowledge was 'needed for the judgement of those crimes which are tried in an ecclesiastical court;' and the power of binding and loosing took on a new meaning: 'the judicial authority of the ecclesiastical tribunals over the Church as a society.'[4] In the letter to Hildegard of Bingen, while Eugene explicitly acknowledged his own key of knowledge and associated it with the power of binding and loosing, he also seems to have minimised his own capacity in important spiritual matters as the holder of that key. Such a reluctance to use this key either to support or interpret her purported miraculous gifts may lend some support to Benson's interpretation at least for this period in time when the role or function of the pope in practice consisted primarily in his capacity as judge of the supreme tribunal of the Church. In effect, the pope showed himself in this case as basically disinterested if not circumspect about Hildegard's mystical faculties, if not for the attestation of reliable witnesses; and he contented himself with an attempt to edify her briefly with biblical exhortations so that she might use her powers prudently. And exercising his more congenial and practical responsibility for the physical welfare of the clergy, Eugene simply proceeded to approve her designs to build a new cloister, which, however, he ultimately left to the administrative discretion of her bishop.[5]

In total, while a self-acknowledgement of papal primacy was almost certainly implied as the source of the widely articulated papal 'debt' or 'care,' the direct assertion of the principles of that primacy contextually as expressions in the daily business of the curia and its diplomacy in the nearly 300 examples of *arengae* of the period 1143-53 was exceptional. Rather, again, papal authority was expressed as a matter of routine in a passive if not self-evident 'duty' to protect and provide loosely for all churches and churchmen. And even in this sense, the traditional chancery

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[1] St. Hildegard of Bingen, *Letters*, col. 145.

[2] K. Froehlich added that medieval theologians had problems distinguishing the key of knowledge 'clearly from the main key which had to be at least the authority to excommunicate, if not to impose and remit penances. But can *scientia* really be a key? Can and must every priest be assumed to have discretionary knowledge?' K. Froehlich, *Saint Peter*, 14-16.

[3] See, Gratian, *Decretum*, D. 20, C. 24 q. 1.

[4] R.L. Benson, *Bishop-Elect*, 47-49, also, 72-74, 85, 88; see also, B. Tierney, *Foundations*, 30-33; W.H. Principe, *Theologians' Views*, 47-48, 56-61, 65-79, 106-08.

[5] St. Hildegard of Bingen, *Letters*, col. 145.

use of the first person plural personal pronoun would have potentially obscured in the many addresses to bishops this vaguer implication of the pope's ostensibly unique primacy. For instance, it was written to the bishop of Verden at the beginning of 1152: 'If we should weigh with diligent consideration the care of the universal Church which, with God as the Author, we have received to be borne, it must be provided for by us that we conserve for all of the faithful, chiefly for those who are recognised to tend specially to our tutelage, their own justice.'[1] Numerous equally vague *arengae* of letters addressed to bishops could be adduced, such as those concerning the pope and episcopate's mutual temporal protection of the churches and clergy: 'The authority of the governance which we have received admonishes us to be the most ready defenders of ecclesiastical property and to place the securest wall of protection against those who might endeavour to pillage it.'[2] And in *arengae* addressed to bishops pronouncing the judicial responsibilities of the Church it was written: 'It is the inherent duty of our office principally to remove out of the way the scandals of the churches and provide beneficially for their peace and tranquillity.'[3] Conversely, in certain other *arengae* the implication of the pope as the sole subject was much more explicit: 'The honour of the apostolic see and the Roman pontiffs is thereupon preserved in its entirety if it guards for every church its own dignity.'[4] In similar examples, reference to specific terms, such as 'apostolic see,' made it rather clearer that the pope alone was to be understood as the pronominal subject.[5]

It is easy to brush aside *in toto* this type of grammatical ambiguity, and assert that this was a mere accident of language: that reference to the pope, or Roman Church, alone was in such cases invariably to be assumed. Yet, the potential ambiguity in these cases comported with the practice of the pope in this period by which the provincial prelature as well as the college of cardinals was being increasingly incorporated into the routine of the daily business of the curia. In practice, as in rhetoric, the pope was a mere overseer or custodian of the Church, not a ruler properly speaking. And while the curia was becoming increasingly the centre of a larger, more extensive and sophisticated global administrative and judicial network, the principal function of papal administration or governance in this period consisted in the mere delegation of causes, especially to the members of the episcopate. And in this sense, the curia could more explicitly stress the shared responsibility of the ecclesiastical princes, as Eugene III did for the bishop of Olomouc in April 1146: 'Since it is the duty of the office of the apostolic dignity over which we preside, unworthily, to esteem, form, and strengthen the concord of the kingdom, and daily solicitously watch over the

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[1] Appendix 1, no. 217 (*PL*, Eugene III, no. 474).
[2] Appendix 1, no. 90 (*PL*, Eugene III, no. 472).
[3] Appendix 1, no. 258 (PUE3, no. 49). See similarly, e.g., Appendix 1, no. 26, 29, 32, 33, 38, 44, 67, 120, 121, 154, 155, 156, 159, 162, 164, 170, 188, 193, 194, 212, 218, 249, 250, 255, 261.
[4] Appendix 1, no. 41 (*APRI* 3, no. 76 [*IP* 3, 325/29; *IP* 10, 383/42; JL, 8929]); see similarly, e.g., Appendiix One, no. 37, 187.
[5] See, e.g., Appendix 1, no. 39, 40, 43, 53, 61, 161, 181, 182, 197, 208, 215, 222, 233, 234, 235, 256, 266, 267, 268, 273.

progress of the entire Church in the Lord, we have concluded that it is always useful that we share with you, our most cherished faithful coadjutor, any labour no matter how small to be borne for the sake of the necessity and utility of the Church.'[1]

1.3 THE CAUSAE MAIORES

In ecclesiastical administrative practice in the first half of the twelfth century, the effect of papal primacy was felt first and foremost with regard to those 'major causes' which increasingly came to be considered to fall under the exclusive jurisdiction of the pope. Drawing from various authentic and inauthentic traditions stemming from as far back as the Council of Sardica (343),[2] the Gregorian papacy realised the potential of its judicial and jurisdictional authority, and its right as the Church's highest appellate judge. In *Dictatus pape*, Gregory VII thus concluded that the pope's sentence could be retracted by no one, no one appealing to the apostolic see could be condemned, and that the *causae maiores* of all churches, as exclusively papal business, ought to be referred to it.[3] In practice, Urban II's extended exiles provided increased accessibility to potential French appellants; while Paschal II at times vigorously defended these claims.[4] Thus, by the fourth decade of the twelfth century, it has been said, a concerted effort was undertaken to bring more and more causes including all *causae maiores* to Rome by Innocent II, who justified the papal deposition of a simoniacal bishop of Liège in 1135 on the basis that it had 'been promulgated by the general law of the Church that the major causes should devolve to the examination of the apostolic see.'[5] Towards the end of Innocent's pontificate many of these claims and their traditions were enshrined in the *Decretum* of Master 'Gratian'—traditionally dated ca. 1140[6]—which collected the authorities and laws which provided a basically free and unassailable right of appeal to the pope, as final

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[1] Appendix 1, no. 263 (*PL*, Eugene III, no. 104).

[2] See, H. Hess, *The Canons of the Council of Sardica A.D. 343: A Landmark in the Early Development of Canon Law* (Oxford, 1958), 109-27; *Epistulae imperatorum pontificum aliorum inde ab anno CCCLXVII usque ad anno DLIII datae Avellana quae dicitur collectio*, ed. O. Günther (*Corpus scriptorum ecclesiasticorum Latinorum* 35: Vienna, 1895-), 779-80 (JK, 664); *Collectio in LXXIV titulos digesta*, ed. J. Gilchrist (*Monumenta iuris canonici* B: *Corpus collectionum* 1: Vatican City, 1973), c. 10 (here at, 24); Gratian, *Decretum*, C. 2 q. 6 c. 8, C. 6 q. 4 c. 7, C. 9 q. 3 cc. 10, 16-18 (see also, A. Winroth, Decretum, 211); *Decretales Pseudo-Isidorianae et capitula Angilramni*, ed. P. Hinschius (Leipzig, 1863), 132; also, *Collectio in LXXIV titulos digesta*, c. 3 (here at, 20).

[3] Gregory VII, *Das Register*, Bk. 2. LVa. 201-08 (cc. 3, 4, 7, 13, 18-21).

[4] See, Eadmer, *Historia novorum in Anglia*, ed. M. Rule (*Rerum Britannicarum medii aevi scriptores* 81: London, 1884), 231-33 (*PL*, Paschal II, no. 425, col. 378-79 [JL, 6453]).

[5] *PL*, Innocent II, no. 178, col. 226-27 (JL, 7696); this was repeated between 1130 and 1138 in a letter to the archbishops of Reims, Sens, and Tours: *PL*, Innocent II, no. 295, col. 342-43. For this, see, I.S. Robinson, *Papacy*, 179-83, 195, 458-59; I.S. Robinson, *Institutions*, 373-74; A. Becker, *Papst Urban II. (1088-1099)* (*MGH* Schriften 19: Stuttgart, 1964-), 219; J. Haller, *Das Papsttum: Idee und Wirklichkeit* (Stuttgart, 1939-), 7.

[6] On the date and place of the composition of recensions of the *Decretum*, see, A. Winroth, Decretum, 136-45; S. Chodorow, *Gratian*, Appendix 1; J.T. Noonan, 'Gratian Slept Here: The Changing Identity of the Father of the Systematic Study of Canon Law,' *Traditio* 35 (1979), 145-72.

judge—who himself could not be judged—either before or after sentencing.[1] On the *causae maiores per se*, however, which did not always concern appeal but the papacy's right in certain cases even as a court of first instance—although these two things were certainly interrelated—the *Decretum* was less prolix and explicit, beyond an emphasis that the 'graver' and 'greater' business, especially of 'all bishops,' ought to be referred to the apostolic see.[2]

The issue of the *Decretum*, however, raises the question of what Gratian himself was actually responsible for and what were instead *paleae* or even merely components of what A. Winroth dubbed the 'second recension' (the standard and fuller text, or 'Roman edition') of 'Gratian II'—who may or may not have been the same person as the actual Gratian, whom Winroth dubbed 'Gratian I.' Winroth, in fact, has lately altered the entire conception of the content, authorship, and dates of the *Decretum*, demonstrating that originally there were two complete but distinct recensions of the work—the first of which at least was certainly written by the personally obscure legal authority we know as Master Gratian.[3] Furthermore, given the acceptance of two distinct recensions, Winroth had also to reconsider their dates: the first recension was completed no earlier than 1139; while the second and later recension was known in Paris probably by the autumn of 1156 and certainly before 1158.[4] These dates, Winroth pointed out, suggest that the systematic teaching of canon law at Bologna began in its more fully developed form later than traditionally thought. They also militate against the notion of the contemporaneousness in the period 1143-53 of the dispersion of and familiarity with at least the second and fuller recension of the *Decretum*. Broadly, Winroth concluded that with regard to the discipline of both canon and Roman Law, 'everything points to a discipline in quick, almost revolutionary expansion, which in less than ten years outgrew the work that had formed it'—that is, 'Gratian I's' first recension of the *Decretum*. Likewise, in his estimation, papal government became only after Alexander III 'more complex, ambitious, and bureaucratic, creating a new case law through the increasing number of legal cases decided in the pope's court'—and leading in turn to the decretal collections.[5] With these considerations in mind, it must be entertained that the curia in the period 1143-53 as regards especially its systems of justice was proceeding on the basis of far less coherent and systematised legal authorities and a less academically developed scientific jurisprudence, and thus with considerably more improvisation. At the same time, it was precisely in this period that the legal

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[1] See, Gratian, *Decretum*, C. 2 q. 6, C. 6 q. 4, C. 9 q. 3; also, Gratian, *Decretum*, D. 79 d. p. c. 10, c. 11 (see also, not in the first recension of the *Decretum* of 'Gratian I,' C. 17 q. 4 c. 30; see, A. Winroth, Decretum, 216).

[2] See, Gratian, *Decretum*, C. 2 q. 6 cc. 5, 10, d. p. c. 10, c. 12; see also, Gratian, *Decretum*, C. 7 q. 1 c. 39 (see also, C. 7 q. 1 d. p. c. 39, not in the first recension; see, A. Winroth, Decretum, 210), C. 9 q. 3 c. 6.

[3] On this, and on the content of the first recension itself, see, A. Winroth, Decretum, esp. the appendix.

[4] J.T. Noonan concluded that the *Decretum* reached its present form about 1150. J.T. Noonan, *Gratian Slept Here*, 159-61; J.T. Noonan, *Bribes*, 147.

[5] A. Winroth, Decretum, esp. 136-96, here at, 145.

disciplines began to develop at a profound pace, arguing in favour of a growing culture of legalism generally in this decade.

All in all, 'Gratian I' prescribed a basic right of appeal to Rome, especially for all bishops and those who would feel themselves oppressed, prejudiced, or aggrieved (*gravare*) at the ordinary or 'greater' court, or when disagreement arose at an intermediary court. And clearly, in practice, appeals and first instance petitions were flowing freely to the curia by ca. 1145,[1] with all manner of causes being brought before the pope and his tribunal. This included many of those *causae maiores*, which throughout the twelfth century remained undefined by any uniform criteria.[2] The popes themselves made no attempt to catalogue these; and when they did speak out directly, they concerned themselves primarily with the vague principle that major causes belonged legally to the jurisdiction of Rome.[3] Nevertheless, the actual phrase *causa maior*, or any equivalent phrase, did not appear anywhere in the extant papal documents of the period 1143-53. Rather, for these immediate popes, struggling to stay abreast of the round of everyday business, the power to oversee all major causes was treated largely in the context of the general papal power to intervene in all ecclesiastical causes brought before the papal tribunal, as court of appeal or first instance, as well as the basic right of anyone to bring any cause before the curia, and not any particular right to reserve for itself any specific category of causes. In other words, the curia in this period left relatively few explicit statements on the specific procedural rights of, or obligations towards, the papacy. This was almost certainly partly a result of the fact that the pope in this period needed to do so little to attract business, great or small, so great and constant was the demand in the provinces for the justice of his office. Thus, when the occasion arose to defend and assert the papacy's

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[1] On this, and on the appellate system, see, ch. 3.4 and 6.3, and in addition to the works cited above, S. Chodorow, *Gratian*, 65-95; S. Chodorow, 'Dishonest Litigation in the Church Courts, 1140-98,' *Law, Church, and Society: Essays in Honor of Stephan Kuttner*, ed. K. Pennington and R. Somerville (Pennsylvania, 1977), 187-206, here at, 189; I.S. Robinson, *Papacy*, 82-83, 106-07, 181-86; J. Sayers, *Papal Judges Delegate in the Province of Canterbury 1198-1254: A Study in Ecclesiastical Jurisdiction and Administration* (Oxford, 1971), xxiv, xxix, 1-15, 65, 96, 100, 163-220, 238; M.G. Cheney, 'The Compromise of Avranches and the Spread of Canon Law in England,' *English Historical Review* 56 (1941), 177-97; G. Barraclough, *English Historical Review* 53 (1938), a review of S. Kuttner, *Repertorium der Kanonistik (1140-1234):* Prodromus corporis glossarum (Studi e testi [Biblioteca apostolica vaticana] 71: Vatican City, 1937-), 492-95, here at, 494 n. 3; C.N.L. Brooke and A. Morey, *Gilbert Foliot and his Letters* (Cambridge, 1965), 230-44; *The Letters of John of Salisbury* 1, xxxi-xxxvii; F.W. Maitland, *Roman Canon Law in the Church of England* (London, 1898), 100-31; C.R. Cheney, *From Becket to Langton: English Church Government, 1170-1213* (Manchester, 1956), 42-86; C.R. Cheney, *Pope Innocent III and England* (Stuttgart, 1976), 97-99, 117; R.W. Southern, *Western Society and the Church*, 106-25; S. Runciman, *The Eastern Schism: A Study of the Papacy and the Eastern Churches during the Eleventh and Twelfth Centuries* (Oxford, 1955), 119; P. Herde, *Formularies*, 323-24; B. Tierney, *Foundations*, 28-29.

[2] Later canonists would progressively add to the list of the Church's 'greater causes,' so that by the mid-thirteenth century the canonist Hostiensis would number sixty types of causes in which papal authority had to be brought to bear. K. Pennington, *Papal Monarchy*, 82.

[3] Thus, by the beginning of the thirteenth century Innocent III would echo Innocent II's far earlier pronouncement when asserting in the decretal *Cum ex illo* that 'from that general privilege which our Lord has granted to St. Peter and through him to the Roman Church...the major causes...pertain to the highest priest of the apostolic see *de jure*.' *Decretales*, Gregory IX, Bk. 1. VII. 1.

juridical rights, beyond a few statements defending the right of appeal,[1] it did so almost solely in the context of the failure of the curia's powers of enforcement and coercion, and in the face of ecclesiastical resistance to papal mandates; but almost never in the outright denial of what was construed as papal jurisdiction. Nevertheless, for the canonist Hostiensis (d. 1271), the 'general privilege' of the Petrine commission over all Catholics to which Innocent III referred in his decretal *Cum ex illo* justified especially the claim that it belonged to the pope to oversee the major causes of all bishops.[2] From the second half of the twelfth century this meant, especially, the judgement, translation, abdication, or reconciliation of bishops, as well as the division, unification, or creation of bishoprics.

In the early Middle Ages, especially north of the Alps, archbishops and their suffragans frequently did effect the judgement, translation, and abdication of other bishops, and papal involvement in such *causae maiores* came only slowly.[3] 'Gratian' himself was reticent or unclear on these matters; and subsequent canonists, while tending in general towards agreement on the necessity of papal permission in all such cases, acknowledged anomalies or reservations. At the same time, papal decretal letters on these subjects, leading up to Innocent III, were infrequent and inconclusive; and while the popes in the period 1143-53 found themselves involved in several such major episcopal causes, they especially did very little to define them. Indeed, most of these questions would largely loom until the beginning of the thirteenth century, when Innocent III would clearly and conclusively in law and practice establish the exclusive right of the pope to act or assent in all such cases, clarifying both the principle and procedure.[4] To begin with, in the matter of the judgement of bishops, as early as 343 the Council of Sardica had permitted final appeals to be made to the pope; and a few texts in the early collections of canons declared that bishops should never be judged without papal consultation. In practice, however, these canons were largely ignored. In *Dictatus pape*, Gregory VII asserted the exclusive right of the pope to depose bishops;[5] and into the twelfth century, the judgement of bishops became by and large a papal prerogative, though again without legal clarity and, it has been thought, with lingering tensions between the old practice.[6] The canons of the *Decretum*, for instance, acknowledged that bishops had in fact been legally judged in the past by metropolitans or synods; yet its *dicta* were unclear on the conflicting texts and contributed little on the subject.[7] One *dictum*, for instance, noted that 'very many bishops

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[1] See, ch. 3.4 and 6.4.
[2] K. Pennington, *Papal Monarchy*, 110-14.
[3] K. Pennington, *Papal Monarchy*, 75-76.
[4] See, K. Pennington, *Papal Monarchy*, 13-114, esp. 43-114.
[5] Gregory VII, *Das Register*, Bk. 2. LVa. 202 (c. 3).
[6] K. Pennington, *Papal Monarchy*, 76-77.
[7] See, Gratian, *Decretum*, D. 21 cc. 4, 5, C. 2 q. 1 c. 5, C. 2 q. 6 c. 11, C. 2 q. 7 c. 44, C. 6 q. 3 c. 2, C. 6 q. 4 cc. 1, 2, C. 9 q. 3, d. p. c. 21; see also, from the second, later recension of the *Decretum*, C. 2 q. 4 c. 3, C. 2 q. 6 c. 36, C. 6 q. 3 c. 3, C. 6 q. 4 c. 4; see, A. Winroth, Decretum, 206-10; cf., in general, Gratian, *Decretum*, C. 1 qq. 3, 4, C. 2 q. 1, C. 3 q. 6, C. 6 q. 4, C. 10 q. 3 c. 6.

are found who have been condemned without the Roman pontiff having ever been consulted,' while at the same time insinuating that these cases were historical anomalies allowed in order to maintain the Church's peace.[1] In sum, papal rights gained very little by Gratian's initial recension of the *Decretum* in the way of protecting any exclusive right to condemn or judge bishops, and the curia ca. 1145 was left with quite little in the way of a definite legal authority upon which to base a system of procedures.

Nevertheless, competition with the papal court in the period 1143-53 with regard to bishops' causes appears to have been so utterly lacking that any the finer legal questions were basically irrelevant: as a rule, bishops seem to have perceived the papal curia in this period as the only proper forum for all of their own juridical causes. Accordingly, even mid-twelfth-century kings, at times, were seen to acknowledge papal prerogatives in such matters:[2] when Eugene III sent the cardinal legates Bernard, cardinal-priest of S. Clemente, and Gregory(2),[3] cardinal-deacon of S. Angelo, into Germany after the completion of the Treaty of Constance in 1153, the new king, Frederick I, according to his chronicler, Otto of Freising, availed himself of the opportunity to have several personally undesirable German bishops, including the archbishop of Mainz, deposed.[4] And later, in 1157, when the bishop of Chichester argued his case against Battle Abbey before King Henry II of England, expostulating before the young monarch that 'no bishop, no ecclesiastical person can be deposed from an ecclesiastical see without [the pope's] judgement or permission,' the king admitted that this was 'most true,' even if he wryly added that in practice, and with sufficient coercion, one might be pushed out.[5] For the actual papal documents of 1143-53, however, relatively few cases actually involved the outright suspension or deposition of bishops: this was perhaps testament in itself to the extraordinary concord between the episcopate and curia in this immediate period. Only three papal letters, in fact, made actual reference to deposition: one of these letters is suspect;[6] and another has come to us only from a charter ca. 1175.[7] In the only

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[1] Gratian, *Decretum*, C. 3 q. 6 d. p. c. 9; see, K. Pennington, *Papal Monarchy*, 79; S. Chodorow, *Gratian*, 178-86; I.S. Robinson, *Institutions*, 374.

[2] K. Pennington, *Papal Monarchy*, 79.

[3] From here on out, a numerical suffix, in parentheses, is attached to every cardinal sharing a first name, regardless of regional variations of names, corresponding to the charts and data provided on the cardinalate in this period in Appendix 2.

[4] See, Otto of Freising, *Gesta*, 120-23; also, P. Munz, *Barbarossa*, 56-68; K. Pennington, *Papal Monarchy*, 79, 91-92; see, Appendix 2, for the cardinal legates Bernard and Gregory(2).

[5] *The Chronicle of Battle Abbey*, ed. E. Searle (Oxford, 1980), 186-87.

[6] According to a document attributed to Lucius II, that pope ordered the archbishop of Reims and the bishops Beauvais and Arras to investigate accusations against the bishop of Orléans and, if they should find him guilty of violating oaths and alienating goods, to depose him and cause to be elected another in his place within thirty days. The editors of this letter, however, were unsure whether it was actually written in the chancery or if it was a forgery by the bishop of Orléans' own accusers. JL, 8696.

[7] At the Council of Cremona in July 1148 Eugene III deposed the bishop of Acqui 'with the counsel of the cardinals and the archbishop of Milan and the bishops of all of Lombardy who were then with him, and voided all alienations made by the same, ordering all who had received from him alienated properties of his diocese to restore them to the diocese under the penalty of excommunication.' *IP* 6/2, *192/6.

certain papal letter of the period which mentioned deposition, in May 1147 Eugene III announced to the bishops of Durham and Carlisle and the deacon and canons of York the deposition of William Fitzherbert, the archbishop-elect of York, on the simple express grounds that he had failed to appear before the curia in response to an appeal.[1] And in every case, although they pertained implicitly to the papal jurisdiction, no reference was made to the actual papal right to depose *per se*.

Far more letters, on the other hand, seventeen in total, concerned the suspension or threatened the suspension of bishops.[2] Five of these concerned the controversy over the Spanish primacy of Toledo, in which the pope, from May 1145 through the end of 1149, would continue to threaten to suspend the archbishop of Braga explicitly on the grounds that he was failing to respond to a papal appeal and was acting against papal privileges in failing to honour the primacy of Toledo—ultimately the archbishop was suspended, if only temporarily, until he came to curia in person and obtained absolution with the promise to honour the primate in future.[3] This was the same in the case of the bishop-elect of Piacenza, who failed to respond to an appeal by the archbishop of Ravenna.[4] In all such cases, in fact, the pope suspended or threatened the suspension of bishops without reference to the exclusive papal right to do so, rather, on account of a bishop's failure to respond to the curia regarding an appeal or plaint, or to comply with a papal judgement or mandate, or, as in the case of the archbishop of Cologne, for failure to attend the Council of Reims in 1148.[5] According to John of Salisbury, in fact, the pope did suspend the bishop of Winchester and the archbishops of Cologne and Mainz 'and all others who, having been summoned, did not come to the council.'[6] John of Salisbury, however, like the pope himself, offered no theoretical justification on the pope's part in exercising this right, assuming that it belonged to his authority to summon and conduct a general council of the Church.

At least two dozen other letters concerned disobedient bishops;[7] and nearly all of these

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[1] PUE3, no. 62; see, PUE2, no. 50 (JL, 8863).

[2] *PL*, Eugene III, no. 22, 296, 322, 367, 370, 371, 557; *IP* 6/1, *253/7; *APRI* 2, no. 386 (JL, 8753); *APRI* 3, no. 80 (*IP* 6/1, 254/13; JL, 8960); PUE3, no. 62; PUE2, no. 50 (JL, 8863); PUS2, no. 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934); Le bolle pontificie, Montecassino, no. 20 (*IP* 8, 180/260), 21 (*IP* 8, 181/261); see also, *IP* 6/1, *253/3, *253/5, *253/6, *253/8, *254/10, *254/12; *IP* 6/2, *14/30; PUF7, Nach. Gott., no. 36; PUP, no. 44, 45.

[3] *PL*, Eugene III, no. 22, 296, 370, 371; *APRI* 2, no. 386 (JL, 8753).

[4] *PL*, Eugene III, no. 322.

[5] *PL*, Eugene III, no. 367.

[6] *HP*, 10-11. Winchester won a stay through the intercession of his brother, the king, and other prominent men, allowing him to come to the curia in person to seek absolution; Mainz was ultimately deposed in 1153 by cardinal legates at the behest of Frederick Barbarossa; and the archbishop of Canterbury was given power by the pope to absolve or hold suspended the English bishops and abbots as he thought fit.

[7] *PL*, Celestine II, no. 16, 44; *PL*, Eugene III, no. 60, 101, 229, 243, 353, 376, 392, 447, 450, 514, 569, 588, 589; Kanonistische Ergänzungen zur Italia Pontificia, no. 66 (*IP* 5, 236/11); PUE2, no. 73 (JL, 9503); PUE1, no. 54; PUF2, no. 41; PUS2, no. 60 (JL, 9258); PUP, no. 44, 46; PUF7, Nach. Gott., no. 36; Nachträge zu den PU in Italiens 4, no. 8 (*IP* 5, 196/4).

involved clerical controversies brought to the curia by mostly episcopal parties, and subsequent episcopal resistance to papal orders.[1] Indeed, resistance to papal mandates was not uncommon in this period, and occasionally elicited papal declarations on the sinfulness and illegality of such presumption. Thus, while some such cases might have presented good assertions of papal primacy, they also demonstrated in practice how that primacy could and would be resisted or flouted by distant subjects, and, concomitantly, the limitations of the curia's powers of coercion in the provinces by invariably extending the apostolic mercy upon offenders, while only occasionally threatening punishment.[2] In any event, in essentially all of these cases it was the disobedience towards papal orders or the abrogation of due judicial processes which formed the substantive issues, and not the papal right *per se* either to depose, suspend, or reprimand and punish bishops: these rights were never actually called into question; and accordingly the pope either chose not or saw no need actually to define his specific rights.

In total, the principle of the papacy's right to judge, condemn, or depose bishops, or at least the need for papal cognisance in all such cases, appears not to have been an issue at any point in the period 1143-53. In fact, excluding causes delegated by the pope to provincial judges, there is no unequivocal evidence in the papal letters of the period of any case, great or small, in which a bishop judged, illicitly or not, another, even lesser, bishop without papal cognisance. Furthermore, a large percentage of those papal letters of the decade 1143-53 which concerned clerical controversies also concerned one or more bishops as parties; and as such, every one of those letters could be construed as having constituted a *causa maior*. In terms of the substantive nature of those causes, on the other hand, relatively few were in fact major. For instance, several major causes or controversies in this period were brought before the pope concerning disputes over metropolitan or primatial jurisdiction. In particular, such controversies were apparently a focal point of the proceedings at the Council of Reims in March 1148. There, according to John of Salisbury, the

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[1] Otherwise, one letter, from late 1149, involved the suspension of the archbishop of Cologne noted above. *PL*, Eugene III, no. 367. Another, from March 1146, concerned a controversy delegated to the archbishop of Rouen between the bishop of Bayeux and the earl of Gloucester over the goods of the bishop's church which the earl was accused of illegally detaining, reprimanding the archbishop of Canterbury and the bishops of Worcester and Bath for failing to compel the earl to come to justice. PUF2, no. 41. In early 1150 Eugene reproved the entire Polish prelature for failing to honour the sentences passed by the former cardinal legate in their parts, Guido(4) de Crema, cardinal-deacon of S. Maria in Porticu. *PL*, Eugene III, no. 376; see also, for this case, *PL*, Eugene III, no. 271, 319; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 7, col. 1619-21. And sometime in 1153 Eugene III wrote to the recently-made cardinal-deacon *Magister* Ildebrand of S. Eustachio that he had received certain information that the patriarch of Grado 'has neglected entirely to handle the cause of the people of Ferrara which we have committed to him to handle and has not disciplined any of them with anathema, just as it has been enjoined upon him by us.' The details of the actual cause are obscure; but it had apparently been delegated with specific procedural instructions which the patriarch was apparently either unable or unwilling to effect. Accordingly, the pope re-delegated the case to the cardinal along with the bishops of Parma, Reggio Emilia, Mantua, Imola, and Faventino with specific instructions to investigate the case and ascertain and solemnly punish the individual guilty parties and place the entire diocese of Ferrara under interdict. Kanonistische Ergänzungen zur *Italia Pontificia*, no. 66 (*IP* 5, 236/11).

[2] See, ch. 6.4.

archbishop of Lyons claimed primacy over the archbishops and provinces of Rouen, Sens, and Tours; the archbishop of Vienne claimed Bourges; the archbishop of Trier claimed Reims; and the archbishop of Canterbury complained about the archbishop of York.[1] Four months later, at the Council of Cremona, the archbishops of Ravenna and Milan contended with each other over precedence; the archbishop of Milan further claimed Genoa; Ravenna claimed Piacenza; and the bishop of Maurienne put forth a claim against the archbishop of Milan concerning jurisdiction.[2] Of these claims, however, only the controversy between Ravenna and Piacenza[3] and, to a certain extent, the Canterbury-York primacy dispute were corroborated by papal letters of this period.

Two further papal letters, on the other hand, inferred that similar claims, or controversies, not mentioned by John of Salisbury were in fact addressed at the Council of Reims: the metropolitan controversy between the archbishop of Tours and the bishop of Dôl;[4] and the primacy controversy between the archbishops of Toledo and Tarragona.[5] The letter concerning the Tours case was somewhat significant: in June 1149 Eugene III informed the archbishop and chapter of Tours that he could not meet their request that he write directly to the churches of Dôl and Saint-Brieuc as, 'just as we recollect, a sentence of excommunication had been promulgated against them by you, brother archbishop, on account of their disobedience and contumacy, and afterwards confirmed by us in the Council of Reims, which we decreed to hold ratified until they should come back to their senses from their contumacy and turn back to the obedience of the church of Tours.'[6] What is interesting is that the letter seems to have suggested that the bishops had been excommunicated independently by the metropolitan, although the pope made it equally clear that it occurred as a special case with papal participation and confirmation. Also, significantly, it is known from another letter of Lucius II that Innocent II had actually delegated the metropolitan controversy originally to the bishop of Chartres, then papal archbishop legate: the cause was tried unsuccessfully under his jurisdiction and ultimately re-appealed by the bishop of Dôl to Innocent II, who subsequently died before both parties could appear at the curia.[7]

In general, the eagerness with which many prelates in this period seemingly pursued claims over primatial or metropolitan rights before the pope can be construed as a sign of the recognition of the pope's growing primacy and, at the same time, probably contributed to the growth of that same primacy. On the other hand, that many of these claims are known to have been brought

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[1] *HP*, 4-6.
[2] *HP*, 50 (*IP* 6/1, *60/164, *60/165, *60/166; *IP* 6/2, *267/8).
[3] The pope also sent a letter to the archbishop of Ravenna concerning this case from Reims on 29 March 1148, near the close of the Council of Reims; see, *PL*, Eugene III, no. 264.
[4] *PL*, Eugene III, no. 353 (JL, 9343, for the date).
[5] *PL*, Eugene III, no. 447.
[6] *PL*, Eugene III, no. 353 (JL, 9343, for the date).
[7] See, *PL*, Lucius II, no. 40, 43.

before the pope only at a general council of the Church suggests that there was a recognition that it was the universal assembly of prelates, though summoned and presided over by the pope, which was regarded as the most authoritative forum for such claims. In any event, those claims which were described by John of Salisbury received, according to the same author, no resolution at Reims or Cremona; nor was the pope even willing there to consider the claims substantively. The pope responded to each claim, according to John of Salisbury, simply that none of the parties had been summoned explicitly to plead in such causes. Conversely, several similar causes, including those concerning Tours and Toledo, as well as Ravenna, were conducted independently at the curia throughout the decade 1143-53 and with mostly definite results: at least seventeen papal letters of the period 1143-53 concerned disputes over the Spanish primacy of Toledo;[1] three others concerned a metropolitan dispute between Toledo and Braga over the diocese of Zamora;[2] at least fourteen concerned the cause of Ravenna's metropolitan rights over Piacenza;[3] at least six concerned Tours' metropolitan status over Dôl;[4] another concerned Canterbury's status over St. David's (Menevia) in Wales;[5] while two others concerned the metropolitan rights of Bourges.[6]

The implication of John of Salisbury's vague comments regarding the pope's response to the various metropolitan and primatial claims put forward at Reims, as well as at Cremona, was that the pope refused to enter them on the basis that conducting pleadings there would have violated the principles of due process: none of the opposing parties, without any pre-knowledge of the claims, had come prepared to plead.[7] In this context the requisite was the observance of due process, especially the requirements of summons and evidence, which in the case of major episcopal causes would be initiated at the papal court, even if those causes might ultimately be delegated by the curia to provincial episcopal judges. Accordingly, the only such controversies known to have been initiated or addressed at Reims or Cremona which received in the course of those councils any kind of papal or conciliar action, the Tours-Dôl and Toledo-Tarragona cases, had been begun separately at the curia well before the summons to either of those councils. With regard to the Ravenna-Piacenza case, the pope had already at Reims set a terminus for trial, which was kept, for three months after the Council of Cremona. In every such case, nonetheless, the curia left no written

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[1] *PL*, Lucius II, no. 36, 37; *PL*, Eugene III, no. 22, 296, 370, 371, 447, 450, 537, 569, 570/71, 572, 588, 589; JL, 9242, 9701; *APRI* 2, no. 386 (JL, 8753).

[2] *PL*, Eugene III, no. 450; PUP, no. 51, 52; see also, PUP, no. 50, a privilege of protection for the archbishop of Braga confirming Zamora as its suffragan.

[3] *PL*, Lucius II, no. 59; *PL*, Eugene III, no. 264, 322, 323, 324, 520; JL, 9357 (P-H *Iter*, 806); *IP* 5, *450/37, *450/38; *IP* 5, *60/201, *61/205, *61/207; *IP* 6/1, *60/164; Peter the Venerable, *Letters*, 440-42, no. 190 (*PL* 189, Bk. 6. XLIV, col. 462-64; *IP* 5, *511/8); see also, *PL*, Eugene III, no. 314; *APRI* 3, no. 94 (JL, 9478), 96 (JL, 9479), 95 (JL, 9480); Nachträge zu den PU in Italiens 5, no. 9 (*IP* 5, 464/20), 10 (*IP* 5, 477/26).

[4] *PL*, Celestine II, no. 16; *PL*, Lucius II, no. 40, 41, 43; *PL*, Eugene III, no. 152, 353.

[5] *PL*, Eugene III, no. 201; see also, *PL*, Lucius II, no. 39.

[6] *PL*, Eugene III, no. 101; *EPRI*, no. 196 (JL, 8897).

[7] See, *HP*, 4-6, 50.

record articulating or pronouncing upon the exclusive papal right to judge or initiate proceedings *per se* in such causes—although it clearly exercised its special rights to confirm and protect the rights and dignities of metropolitans and primates[1]—while, in the case of Tours and Dôl, at least, Innocent II was even willing to delegate a controversy over metropolitan status to a native legate, though the case would ultimately prove complicated, involving each of Innocent's three immediate successors.

Likewise, in other controversies, cases of papally-commissioned bishops, as judges delegate judging other bishops, are plentiful in the papal record of the period 1143-53, though again these commissions occurred with little to no legal or theoretical justification on the pope's part to delegate his authority.[2] Again, however, the right and facility of the pope in delegating his jurisdiction and juridical authority to other prelates, and the right of those delegates to exercise such, appeared unquestioned. In practice, in fact, the implicit principle appears to have become generally accepted: the pope's cognisance was required in all causes in which other bishops stood to be judged. And again, in these cases, the principles of procedure appear to have been key: procedure in cases of delegation began at the curia; and the procedures of summons and the exposition of evidence presumably followed, whether or not it was stipulated explicitly in the mandate of delegation, or whether or not separate papal summons were issued to the parties instructing them to appear before the delegated court. Likewise, the canonists who immediately followed 'Gratian' paid little attention to the *Decretum*'s chapters which countenanced the judgement of bishops without papal cognisance. K. Pennington suggested that they were perhaps satisfied with the explanation offered by C. 3 q. 6 d. p. c 9 of the *Decretum*, which allowed past non-papal condemnations only as historical exigencies.[3] In this regard, the canonists probably merely reflected canonical practice as it was maintained in the business of the curia around mid-century:[4] while the judgement of a bishop required papal authority, it was a prerogative which the pope could delegate.[5]

The translation of bishops was something of a different matter in this period, yielding one particularly noteworthy case in the succession to the archiepiscopal see of Magdeburg in 1152. Like other *causae maiores*, papal involvement in translations came relatively late and remained sporadic even into the eleventh and twelfth centuries, it has been said, although local churches sought papal permission for such acts much more commonly than before. At the same time, official

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[1] On this, see, ch. 2.2.
[2] See, ch. 5.
[3] K. Pennington, *Papal Monarchy*, 79.
[4] See, e.g., Stephen of Tournai, *Summa* ad C. 2.q. 1.c. 5, cited by K. Pennington, *Papal Monarchy*, 79-80, who provided the Latin; Rufinus, *Summa* ad C. 6. q. 4, cited by K. Pennington, *Papal Monarchy*, 80, who provided the Latin and other citations.
[5] See, K. Pennington, *Papal Monarchy*, 81-85, who provided the citations and some of the Latin to Huguccio's glosses.

papal decrees or pronouncements concerning translations remained rare:[1] although as recently as 1138 Innocent II twice averred that it was the special papal right 'to set up new bishoprics, join two into one, divide one into two, and to transfer episcopal sees,'[2] he said nothing about the bishops themselves. Meanwhile, the *Decretum* treated episcopal translations only briefly, and without clarity.[3] Accordingly, in demonstrating the lack of uniform practice in the matter of translations into the pontificate of Innocent III, K. Pennington adduced the case of Bishop Wichmann, who was translated from the see of Zeitz-Naumburg to the archbishopric of Magdeburg in 1152. The see of Magdeburg had fallen vacant and two candidates were elected: the provost and the dean of the church. The parties deferred their cause to Frederick Barbarossa in Saxony who tried to reconcile the parties but ultimately put forth his own candidate, Wichmann, in accordance, according to Otto of Freising, with the precepts of the Concordant of Worms. The German bishops wrote to the pope informing him of the action and seeking his approval; the provost of Magdeburg meanwhile travelled in person to the curia and lodged a complaint on his own behalf.[4]

In fact, the action had occurred at a time of heightened political sensitivity regarding papal-imperial relations, nearly half a year prior to the ratification of the Treaty of Constance, and elicited a papal fulmination.[5] In the papal letters themselves the pope supported the election of the provost and condemned the translation on the grounds that secular intervention in such cases was 'against justice and the ordinances of the Holy Fathers.'[6] The German bishops all had heeded 'not that which is expedient for the Church of God, not that which comports with the sanction of the sacred canons, not that which would thereby be approved by the will of Heaven, but that which should be pleasing to earthly princes.' For, 'divine law does not permit the transferring of bishops without a proof of evident advantage and necessity, and whereas also a far greater harmony of clergy and people should precede than in other elections, in the transfer of...the bishop of Zeitz...we find none of these circumstances, but only the anticipated favour of the prince.' Those bishops, rather, 'without investigating the needs of the Church, or considering the usefulness of the person, with the clergy unwilling, nay rather, with the majority of them, it was said, protesting it, declare that he

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[1] *Dictatus pape* maintained the exclusive papal right 'to transfer (*transmutare*) bishops from see to see with necessity urging.' Gregory VII, *Das Register*, Bk. 2. LVa. 204 (c. 13). And in 1115 Paschal II asserted that it was known that the translation of a bishop could not occur 'without the authority and license of the sacrosanct Roman see.' Eadmer, *Historia* 5, 233 (*PL*, Paschal II, no. 425, col. 378-79 [JL, 6453]); see, K. Pennington, *Papal Monarchy*, 75-77; I.S. Robinson, *Institutions*, 374; M. Brett, *The English Church under Henry I* (London, 1975), 36-37.

[2] *PL*, Innocent II, no. 310, col. 355-57, no. 323, col. 372 (JL, 7908).

[3] See, Gratian, *Decretum*, C. 7 q. 1 c. 34, d. p. c. 33, c. 37, d. p. c. 42; see also, Gratian, *Decretum*, C. 21 q. 2 d. p. c. 3; see, K. Pennington, *Papal Monarchy*, 85-87; I.S. Robinson, *Institutions*, 374.

[4] On this, see, Otto of Freising, *Gesta*, 120-23; also, P. Munz, *Barbarossa*, 56-68; K. Pennington, *Papal Monarchy*, 91-92.

[5] *PL*, Eugene III, no. 522, 523 (Otto of Freising, *Gesta*, 120-22; JL, 9605).

[6] *PL*, Eugene III, no. 522.

must be moved to the church of Magdeburg.'[1]

Pennington pointed out that Eugene III avoided any reference to the cause of the disputed election *per se*, as that lay arguably within Frederick's purview, but condemned only the uncanonical translation.[2] In fact, in a simultaneous letter to the chapter of Magdeburg, the pope did turn the issue back to the election—in which he affirmed the party of the provost—and the principles of the Concordat of Worms: 'it has come to our ears that after the election which you all made, save seven of you, with the counsel of religious men, in accordance with God, concerning...your provost, the bishop of Zeitz [Wichmann], having disregarded the honour of his own order, has endeavoured to force himself through royal favour upon your church against justice and the constitution of the Holy Fathers, and, just as we have accepted, has by no means feared to receive illicitly the investiture from the prince himself.' Therefore, 'because we neither can nor ought to suffer that the liberty of the Church is enslaved, ecclesiastical vigour confounded, or the constitutions of the Holy Fathers irritated,' Eugene commanded the chapter, threatening the loss of office and benefice, not to presume to 'assist or favour' Wichmann should he attempt to impose himself upon their church, 'just as an invader.'

In the question of the translation itself, therefore, Pennington was certainly correct in pointing out that the pope stressed that the translation was not canonical on the grounds that there was no pressing need or utility, or unanimity. This was made clear in the letter to the German episcopate. But even in that letter, the pope also returned the question to the election itself and the principles of the Concordat of Worms:

> lend your favour no longer to that cause, and endeavour by your exhortations so to influence our very dear son Frederick...to preserve the liberty of the Church, that he himself desists from his purpose in this matter and no longer bestows his favour upon that same cause in opposition to God, in opposition to the sacred canons, in opposition to the demands of his royal dignity; but that he relinquishes to the church of Magdeburg, as also to the other churches of the realm entrusted to him by God, the free privilege of choosing whomsoever it wishes, in accordance with God's will, and sustains that same election thereafter by his favour, as is seemly for the royal majesty.

The pope concluded that if he could only have seen that what Frederick was 'endeavouring to do concerning our aforesaid brother is supported by reason, we would not think that either his will or your request should at all be opposed. But there was no petition whatsoever to which we can grant our consent in opposition to God and the sanction of the sacred canons.' All was transpiring quite simply against canon law, and in the case of the translation *per se*, because it simply demonstrated no utility, manifest need, or unanimity. But the right of free elections was the express and primary concern in the cause.[3]

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[1] *PL*, Eugene III, no. 523 (Otto of Freising, *Gesta*, 120-22; JL, 9605).

[2] K. Pennington, *Papal Monarchy*, 91-92.

[3] The case would have a long denouement: two legations would be commissioned to investigate and settle the dispute; with both sets of legates being at length frustrated by the king and expelled from the kingdom—the second legate, Cardinal-deacon Gerard(2) of S. Maria in Via lata (1152-55), sent in April 1154, died en route back to Italy. Ultimately, Wichmann travelled in person to Eugene's successor; and Anastasius IV

That notwithstanding, both of the papal letters on the subject were unusual for the period in that they expounded at all the larger canonical questions surrounding the *causae maiores*. More importantly, the severity of the papal reaction in both letters was unusual in the asperity of their rhetoric with regard to imperial or any royal diplomacy, and was due was due primarily to the political circumstances surrounding the cause. Both letters were dated August 1152 and sent from Segni, in the papal Patrimony. The pope at the time was still unable to enter Rome, and had been engaged in near-continuous warfare with the City and commune since his return from France in late 1148. In the spring of 1152 imperial envoys had arrived at Segni and announced Frederick I's election: John of Salisbury, an eye-witness, would later write that they there promised that Frederick would restore the glory of his empire, that 'he would reshape the governance of the whole globe and would make the world subject to the City, saying that he would subdue all things with ease.'[1] In mid-May Eugene confirmed Frederick's election, even though he had not been formally invited to do so. In July a disciple of Arnold of Brescia arrived at an imperial diet with a letter representing, presumably, a new radical wing of the Roman communal movement under the leadership or inspiration of Arnold, and asserting that the German king must seek confirmation and coronation for the *imperium* from the Roman senate and people, as the proper and sole legitimate source of its authority. It also denounced the pope and the Donation of Constantine as a risible and heretical lie.

A month after the letters concerning Wichmann were sent out Eugene wrote to Abbot Wibald, Conrad III's chief counsellor, urging him to prevent Frederick and the German nobles from violating ecclesiastical rights, and warning him that the 'Arnoldists' were plotting to overthrow the communal government and establish their own senators, consuls, and emperor. Eugene meanwhile had entered into negotiations with the moderates of the Roman commune and left Segni in the late summer or early autumn of 1152, intending to enter Rome by the end of the year. At length, the pope was welcomed with the highest honour by the senate and the Roman populace, making a triumphant entry into the City on 9 December, and thereby recognising the existence of the communal government. By October 1154 Frederick was collecting his imperial army near Augsburg, ready to enter Italy.[2] Thus, had the whole Wichmann event occurred under less tense circumstances, or even under Conrad III, it is not unreasonable to suggest that the tone of Eugene's reaction would have been different. In fact, only one other case in the entire period 1143-53 concerned a similar issue: in July 1152—a month before the papal letters concerning the

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begrudgingly allowed him to take the *pallium*, but not from his own hands. On Anastasius and this case, see below, Appendix 2.

[1] *The Letters of John of Salisbury* 1, 207, no. 124.

[2] *PL*, Eugene III, no. 504, 524; *Constitutiones*, 191-94, no. 137-39; *The Letters of John of Salisbury* 1, 204-15, no. 124; Otto of Freising, *Gesta*, 129; *Annales Pisani*, 14; Romuald of Salerno, *Chronicon*, 231-32; *Annales Casinenses*, 310; *Annales Ceccanenses*, 284; also, R.L. Benson, *Political* renovatio, 348-61; P. Munz, *Barbarossa*, 49-59.

Magdeburg case—the disputed election to the abbacy of Mont St. Michel (*in periculo maris*), in which Duke Henry of Normandy was accused of interfering, was referred to the curia. No written censure of the duke exists, however, as the pope treated the whole matter as a basic appeal which he promptly delegated to the ordinary bishop.[1]

Otherwise, in the Magdeburg cause, the actual correspondence nowhere insinuated that the pope even presupposed that papal approval ought to be sought in cases of episcopal translation; and if Eugene III had merely interpreted the German bishops' letter as a petition for confirmation of the translation in accordance with emerging canonistic thought, as K. Pennington suggested, the tenor of his responses was unusually defensive; and the denouement of the case ultimately belonged to the political story of papal 'policy:' although Eugene's reaction was firm, he was not prepared to assert his case explicitly on the grounds of either his *primatus* or universal monarchy. In fact, the procedure involving translations, which have been concluded to have increased distinctly in frequency throughout the second half of the twelfth century, would only become defined in canon law at the end of the century by Innocent III, who determined that a translation must be petitioned for from the pope only as a postulation.[2] In any event, the Magdeburg case is the only case of an episcopal translation which has survived in the papal record of the period 1143-53; while in terms of procedure, the pope merely reacted to an appeal.[3]

The only other evidence for an episcopal translation in this period is anecdotal, and came from John of Salisbury, who noted that after the bishop of Capua had been translated to the archiepiscopal see of Palermo and duly consecrated, ca. 1151 King Roger II of Sicily sent letters and envoys to Eugene III requesting that the *pallium* be granted and suffragans assigned to him. Roger claimed that 'without the *pallium*, with which the plenitude of the office is transmitted, and without suffragans the name of archbishop does not correspond.' The *pallium* was thus granted to the new archbishop 'in accordance with former custom.' But while this cause, like that of Magdeburg, was at its root decidedly political, the translation was presumably approved by the pope without incident, after Roger had in the summer of 1150 loosened the grip which he and his father had held on the churches in their realms and allowed Eugene the free arrangement of the southern church and access to papal legates. Roger, in fact, had been eager to achieve a more meaningful alliance with the pope under the pending threat of a German-Greek invasion of his territories, and in order to have his son recognised as his successor. As a result, according to John of Salisbury, afterwards, Eugene and Roger 'parted friends.'[4] Nevertheless, Roger subsequently

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[1] See, *EPRI*, no. 206 (JL, 9595), 210 (JL, 9704), 211 (JL, 9705).
[2] See, *Decretales*, Gregory IX, Bk. 1. VII, for the decretals; for the canonists, see, Huguccio, *Summa* ad C. 7 q. 1 c.37, d. p. c. 42, cited by K. Pennington, *Papal Monarchy*, 88, who provided the Latin; in general, see, K. Pennington, *Papal Monarchy*, 86-100.
[3] Cf., *PL*, Lucius II, no. 39; PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); see also, *PL*, Innocent II, no. 310, col. 355-57.
[4] *HP*, 65-67.

used the grant of the *pallium* as a pretext to have son crowned co-king without the pope's approval, causing a rift between the two powers and leaving the pope free to seek a rapprochement with Conrad III of Germany.[1]

Otherwise, like other *causae maiores* involving bishops, Innocent III would define the exclusive papal right to approve episcopal renunciations or abdications. *Dictatus pape* had been silent on the subject; and the legal question remained relatively unexplored throughout the twelfth century: canonists regarded it as a special species of translations; and the *Decretum* itself, like *Dictatus pape*, ignored the issue.[2] In the period 1143-53 four papal letters concerned the abdication or resignation of bishops. In one letter, from late 1151, Eugene wrote to the bishop of Arras admonishing him to persevere in his duties as bishop, from which he had apparently requested to be relieved.[3] The letter made no statement about the papal right to oversee or approve resignations, however, beyond insinuating that the bishop's bond to his church 'has been established by the Lord and accepted in our eyes.' Furthermore, the heart of the letter concerned another clerical controversy, addressing various complaints made by the monastery of St. Vaast d'Arras against the bishop and his clergy, and closed thereby by offering the bishop judicial redress, 'should there be anyone whom you trust is able to agree with you against them.'[4] Two other letters concerned a request for resignation by the Cistercian bishop Henry of Beauvais, brother of the French king Louis VII, who, soon after becoming bishop, had come into conflict with local knights who were detaining illicitly certain properties of the see and attempting to extort protection money which had been paid to them customarily by the bishop's predecessors. At length, however, the bishop apparently despaired in the face of the knights' harassment and clashed with the king, who took the side of the knights, and petitioned Eugene III in person in 1151 to be relieved of his burdensome office so that he might return to the quiet of the cloister.[5] According to John of Salisbury, the bishop found the pope at Ferentino; but Eugene refused his prayer:[6] this was followed by two separate papal letters roundly denying the bishop's request.[7] In total, while the papal response in this case did seem at least to imply the requirement of papal permission in the case of an episcopal abdication. In practice, however, Eugene simply disregarded the petition and delegated the entire matter by writing a series of letters to several

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[1] See, *HP*, 67-69.
[2] K. Pennington, *Papal Monarchy*, 102-10; see, *Decretales*, Gregory IX, Bk. 1. IX, for the decretals; see also, Gratian, *Decretum*, C. 19 q. 2 c. 2.
[3] *PL*, Eugene III, no. 412
[4] *PL*, Eugene III, no. 412 (JL, 9501, for the date).
[5] See, *PL*, Eugene III, no. 427, 428, 429, 430, 433, 434, 435 (JL, 9512, *laudatum* in *HP*, 70, should be seen to have referred merely to *PL*, Eugene III, no. 433, 435, as JL failed to recognise), 494; *HP*, 69-70; Bernard of Clairvaux, *Letters*, no. 305, 307 (B.S. James, no. 371, 372), Lindy Grant, *Abbot Suger of St. Denis: Church and State in Early Twelfth-Century France* (London, 1998), 17, 176, 282-83.
[6] *HP*, 70.
[7] *PL*, Eugene III, no. 435 (JL, 9459; see, *HP*, 70), 433 (JL, 9457; see, *HP*, 70).

archbishops and bishops of the realm, as well as at least one letter to Louis VII, instructing them to assist the bishop of Beauvais in defending the properties and revenues of his see against the fractious knights.[1]

In a third case, Eugene in fact ratified the episcopal resignation of the bishop of Zaragoza in spite of the fact that it was 'not at all canonical.' In early July 1152 the pope informed the clergy and populace of Zaragoza that he had learned from the letters of the archbishop legate of Tarragona, the comprovincial bishops, and the accounts of their own brethren whom they had sent to the curia, that their bishop, in the face of his manifest guilt, had willingly laid aside in their presence the pontifical insignia and renounced his office. Accordingly, the letter announced, 'because the church under his administration and through his own guilt had continuously endured, with sins abounding, scandal and neglect, although it is not at all canonical, we have calmly tolerated and are ratifying his renunciation.'[2] Thus, the letter merely confirmed a resignation which occurred under the supervision of an archbishop, who nonetheless in this case was a papal native legate. In sum, therefore, the curia around mid-century seems to have followed the traditional attitude towards episcopal resignations, regarding them as extremely difficult, if not completely legal, but ultimately possible given sufficient necessity to the Church. And in all cases papal rights, while never asserted explicitly, appear to have been scrupulously observed by the respective parties, while both bishops of Arras and Beauvais remained in their offices and in the papacy's good graces.[3]

In other episcopal causes, around thirty or so papal letters of the period 1143-53 concerned to some extent episcopal elections, most of which concerned the cause of Ravenna versus Piacenza, which centred upon Ravenna's claim to the right to confirm the election of Piacenza and consecrate its elect,[4] so that all but six of these thirty or so letters occurred in the context of clerical disputes brought before the curia,[5] suggesting, in total, that the curia took only an occasional direct interest in episcopal elections in the period. Otherwise, very few *causae maiores* addressed or handled by the curia in the same period did not concern the episcopate *per se*. In terms of monastic 'policy,' a series of letters from mid-1147 concerned Eugene III's degradation of the abbey of Balma 'on account of the execrable and horrendous misdeeds, and unheard of contempt of the holy

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[1] *PL*, Eugene III, no. 427, 428, 429, 430, 434, 494.
[2] PUS2, no. 66.
[3] For the bishop of Arras, see, *PL*, Eugene III, no. 558-65, a series of letters written on his behalf in February 1153; and for the bishop of Beauvais, from January-February 1152, *PL*, Eugene III, no. 480-81, 494-95.
[4] *PL*, Lucius II, no. 59; *PL*, Eugene III, no. 264, 314, 322, 323, 324, 520; JL, 9357 (P-H *Iter*, 806); *IP* 5, *60/201, *61/205, *61/207, *450/37, *450/38; *IP* 6/1, *60/164; Peter the Venerable, *Letters*, 440-42, no. 190 (*PL* 189, Bk. 6. XLIV, col. 462-64; *IP* 5, *511/8); *APRI* 3, no. 94 (JL, 9478), 96 (JL, 9479), 95 (JL, 9480); Nachträge zu den PU in Italiens 5, no. 9 (*IP* 5, 464/20); otherwise, see, See, *PL*, Eugene III, no. 329, 465, 522, 523 (Otto of Freising, *Gesta*, 120-22; JL, 9605); JL, 8696; *HP*, 88 (JL, 9565); *EPRI*, no. 194 (JL, 8888); PUE3, no. 62, 82; PUE1, no. 50 (*HP*, 88; JL, 9513); PUS2, no. 66.
[5] See, *PL*, Eugene III, no. 465; *HP*, 88 (JL, 9565); *EPRI*, no. 194 (JL, 8888); PUE3, no. 82; PUE1, no. 50 (*HP*, 88; JL, 9513); PUS2, no. 66.

Roman Church, which the monks of Balma have committed with sacrilegious audacity against our esteemed son, Master Osbertus, to our disgrace and that of St. Peter.' Having interdicted the abbey's churches, the pope committed the house to Cluny, 'out of apostolic kindness' and 'through the intervention of our brothers, to be ordained and arranged into a priory.'[1] No canonical right, however, was offered in justification of the pope's actions, other than the monks' 'sacrilegious contempt' of the Roman Church—in other words, the papal action in this case had resulted from a personal affront. In an earlier cause, however, Celestine II did in fact make explicit that the translation of an abbot required papal permission. At the beginning of 1144 Celestine wrote to the abbots of Hirsau and Ebrach informing them of a dispute over the abbacy of the monastery of Lorsch. One of the claimants had personally appealed to the pope demanding restitution, as he had been 'despoiled without a judgement' of his office of abbot there while absent, although 'he claimed that he has been regularly elected.' 'In truth,' however, as the pope had learned through the attestation of the cardinal-bishop Theodwin of S. Rufina/Porto 'and the letters of many discreet men' that the same abbot was not in fact 'willing to take part in a discussion of his cause at Lorsch and respond to objections, and that he had been translated from the rule of the abbey of Blidenstat to it itself without the authority of the Roman Church, we took from him that to which he had been transferred and suspended him from the other which he had first held.' However, since the same abbot had also accused his rival claimant of simony before the pope, the letter thereby delegated the entire matter to be resolved by the abbots of Hirsau and Ebrach.[2] Otherwise, two further letters, from April 1148 and the beginning of 1149, confirmed for the monastery of Corvey the degradation, promulgated by a cardinal legate, of its former abbot, Henry, who had continued to repugn the abbey.[3] For the most part, however, in this period, although in several cases the papacy did actively intervene in the affairs of the religious, including the correction of deteriorating houses, in practice the curia joined the business of religious houses only on petition, and in that far more for the sake of their temporal business than any spiritual affairs.[4]

In total, in comparison to the examples thus far examined concerning causes which might have naturally been classified as 'major,' it was only in the matter of the papal need, though not necessarily the right, to summon a general council of the Church that the papacy was distinctly explicit and forceful.'[5] Thus, when the pope summoned the Council of Reims in late 1147, he took

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[1] *PL*, Eugene III, no. 185, 186, 187, 203; JL, 9123.
[2] *PL*, Celestine II, no. 25.
[3] Appendix 1, no. 70 (*PL*, Eugene III, no. 335); see, Appendix 1, no. 69 (*PL*, Eugene III, no. 281), concerning the same Henry.
[4] See, ch. 2.3-2.6.
[5] The *Decretum* was unusually clear about the pope's special right to summon a general council of the Church; see, Gratian, *Decretum*, D. 16 d. p. c. 4, D. 17 d. a. c. 1, cc. 1, 6, D. 20 d. a. c. 1, c. 1 (also, not in the first recension of the *Decretum* of 'Gratian I,' D. 17 cc. 2-5, d. p. c. 6; see, A. Winroth, Decretum, 198-99); see also, K. Pennington, *Papal Monarchy*, esp. 43-114; S. Chodorow, *Gratian*, 133-86, esp. 135-41; I.S. Robinson, *Papacy*, 145, 186-208; B. Tierney, *Foundations*, 47-67.

pains to open his summons with a sonorous articulation of his special duty and exclusive right to summon general councils and thus organise and correct the Church.[1] Otherwise, almost no papal letters of the period 1143-53, nor the canons of the Council of Reims, concerned actual articles of faith; while in general major 'spiritual' causes which left a mark in the record are remarkably scarce. For example, heresy and schism were essentially non-issues in this period;[2] while otherwise a single letter concerned the deviation of a Spanish church from the Roman liturgy;[3] and only another single letter the canonisation of the former Emperor Henry II[4]—although, in comparison, under Innocent II at least four separate cases of canonisation were either approved or postponed by the pope.[5] All in all, there was a distinct absence of doctrinal or sacramental concerns as conveyed by the papal letters of the period 1143-53,[6] so that the only evidence that has come to us of the pope and curia actually handling a doctrinal cause has come only from outside commentators who described Bernard of Clairvaux and others' denunciation of the theology of Gilbert de la Porrée.[7]

According to the various narratives, a final trial of Bishop Gilbert's orthodoxy was conducted immediately following the Council of Reims at the beginning of April 1148.[8] The trial itself, presided over by the pope, was described as being conducted 'in consistory' where the

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[1] Appendix 1, no. 268 (JL, 9149 [complete text] [*PL*, Eugene III, no. 232]). In total, at least ten letters concerned the Council of Reims, not including the eighteen canons of the council: *PL*, Eugene III, no. 229, 231, 241, 264, 296, 353, 367, 447; Mansi 21, 713-18 (JL 2, 52-53; *Decretales*, Gregory IX, Bk. 2. I. 2, for c. 5), Council of Reims, cc. 1-18; JL, 9149 (complete text) (*PL*, Eugene III, no. 232); PUP, no. 46; another concerned the Council of Cremona: *PL*, Eugene III, no. 308; see also, *HP*, 50 (*IP*, 6/1, *60/164, *60/165, *60/166; *IP* 6/2, *267/8); *IP* 6/2, *192/6; JL 2, 58; and on the dissolution of the diocese of Modena (*PL*, Eugene III, no. 316, 339, 344; *IP* 5, *315/1, *250/23, *320/4, *320/6). For the Council of Reims, see, Mansi 21, 711-36, 739-42; for other primary sources, see, JL 2, 52-53; see also, N. Häring, *Notes*, 39-59.

[2] See, ch. 2.5.

[3] *PL*, Eugene III, no. 537.

[4] *PL*, Eugene III, no. 93 (*Bambergensia*, no. 35; JL, 8882).

[5] See, ch. 2.1.

[6] This was reflected in the subject-matter of the *Decretum* itself, which discussed these issues primarily in *Causa XXIV*, which treated ostensibly of heresy and heretics, including the Petrine privilege of loosing and binding. While most of these chapters did in fact appear in the first recension of 'Gratian I,' the actual questions on articles of faith, including heresy, and the role and rights of the papal primacy therein, appeared in C. 24 q. 1 cc. 9-18, only one canon of which actually appeared in the first recension, *Super hanc petram*, which merely asserted broadly the unity of the Church under papal direction. Gratian, *Decretum*, C. 24 q. 1 c. 18; see, A. Winroth, Decretum, 220.

[7] For the following cause, *HP*, 14-41; Otto of Freising, *Gesta*, 82-101; N. Häring, *Notes*, 45-59; N. Häring, 'Das Pariser Konsistorium Eugens III. vom April 1147,' *Studia Gratiana* 11 (1967), 91-117; N. Häring, 'The Writings against Gilbert of Poitiers by Geoffrey of Auxerre,' *Analecta Cisterciensia* 22 (1966), 3-83; N. Häring, 'Das sogenannte Glaubensbekenntnis des Reimser Konsistoriums von 1148, *Scholastik* 40 (1965), 55-90; also, Mansi 21, 707-13, 723-36; U.-R. Blumenthal, 'Cardinal Albinus of Albano and the *Digesta pauperis scolaris Albini*: MS. Ottob. Lat. 3057,' *Papal Reform and Canon Law in the Eleventh and Twelfth Centuries* (Aldershot, 1998), 7-49, here at, 45-49; I.S. Robinson, *Papacy*, 109; see also below, ch. 2.1. Gilbert de la Porrée was quite probably Otto of Freising's greatest influence as a scholar, if he did not in fact actually study under him; John of Salisbury likewise was a former student of the bishop. See, Otto of Freising, *The Two Cities: A Chronicle of Universal History to the Year 1146 A.D.*, ed. A.P. Evans and C. Knapp (New York, 1928), intro. 13-14, 43-44; N. Häring, *Notes*, 47.

[8] The papal record itself left no indication of these events.

cardinals, in opposition to the presumption of Bernard and certain French prelates under him, championed the cause of Gilbert. At length, in fact, the cardinals expostulated privately before the pope condemning the impertinence of Bernard's party which was raising itself, in their words, with unspeakable audacity above Roman primacy in pursuit of a personal vendetta of the abbot of Clairvaux who, along with the French clergy, the cardinals declared, were presuming illegally to set down their own profession of faith and peremptorily decide the cause, without consulting the cardinals, when it was to the Roman Church alone, the pope and cardinals together, they demanded, to judge matters of faith.[1] Of particular interest here however was the pope's own apparent indifference to the technicalities of ecclesiology and doctrine. For, despite the fact that our fullest narrative accounts of the events, those provided by John of Salisbury and Otto of Freising, spilt ample ink on the doctrinal niceties surrounding the debate, they both portrayed the pope's demeanour as basically uninterested—at one point in the proceedings, John of Salisbury described the pope 'as though affected by boredom'[2]—requiring little more in the end than a simple profession of faith on Gilbert's part. Indeed, on the whole, Eugene showed himself in the case, as he would throughout the course of his pontificate, as a fundamentally practical and earthbound pope—a judge, protector, politician, and even military leader who was willing to engage on multiple occasions the subjects of his own episcopal see in combat in immediate pursuit of local territorial aims, while betraying on the whole a lack of genius for spiritual affairs, great or small. Indeed, John of Salisbury even suggested that many others had alleged that Gilbert took advantage of this fact in prevaricating before the court: *quod astu et obscuritate verborum occultabat perfidiam, et religionem iudicis circumvenerat arte.*[3]

It was perhaps with this in mind that, unlike the cardinals' private declaration to the pope at Reims concerning their exclusive right to handle the major causes, papal pronouncements emphasising, justifying, or defining the special and exclusive right to handle the *causae maiores* were rare in the papal letters of the period. By and large, when such causes were handled they were done so as a matter of course, without any need to justify the right as such, especially as they occurred primarily in the context of the procedures of the papal systems of justice—whether through appeal or as a cause of first instance.[4] In this sense, for the curia, its simple and *de facto* rights as the pre-eminent tribunal of Christendom were more important or immediate than its rights canonistically with regard to the actual types of causes which ought to have been referred to it. Concomitantly, while the letters recorded several examples when the papacy's authority was

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[1] Otto of Freising, *Gesta*, 99.
[2] Otto of Freising, *Gesta*, 96.
[3] *HP*, 26.
[4] K. Pennington, for instance, stressed that 'Gratian' was not particularly interested in juridical relationships of the ecclesiastical hierarchy as he accepted papal monarchy 'as an established fact.' Nor did he begin the *Decretum* with a general discussion of the papal office, nor define the judicial prerogatives of the pope with precision, leaving the task for his successors at Bologna. K. Pennington, *Papal Monarchy*, 80.

effectively flouted, the curia's umbrage was expressed not so much on account of the fact that its special prerogative to hear the major causes of the Church had been transgressed as the fact that its decision or mandate with regard to any cause brought before it had been abrogated.[1] Some of this at least must be accorded to the fact of the relative peace enjoyed by the curia in this period both within the Church and with regard to the emperor: papal primacy was now an established fact; and clergy from across western Europe took advantage of this, bringing their causes, from the most major to the most minor, to the court of the pope with profound avidity.

At the same time, the pope was careful to observe the participation of the episcopate, as he did in his summons to the Council of Reims, in the conduct of some of the most grave causes. Thus, after the Council of Cremona in August 1148 Eugene informed the bishop of Bologna that, on account of the war of the men of Modena against the monastery of Nonantola, he had permanently deprived the see of Modena of the episcopal dignity and allocated its parishes to neighbouring dioceses 'with the common counsel of our brothers, including both the cardinals as well as...the patriarch of Aquileia...and a great number of bishops who had convened.'[2] But again the pope made no effort to affirm his special right to divide or dissolve a bishopric; rather, he was careful to emphasise that he had acted only with the benefit of an Italian council.[3] In another case, however, in the series of nine letters concerning the re-creation of the diocese of Tournai, which had been united to Noyon,[4] the pope pronounced in a privilege for the new bishop of Tournai in July 1146, echoing Innocent II's confident claims on the matter, that 'with the divine privilege which has been conferred upon it, it has always been allowed and always will be permitted to the sacrosanct Roman Church to unite episcopal sees which have been divided, etc.'[5] While such a statement on the specific rights of the papacy with regard to the *causae maiores*, however terse, was unique for this period, otherwise, in the series of letters dispatched to ensure execution of the act, which had originated under Innocent II, as the pope was careful to point out, Eugene justified his actions merely on the grounds of their usefulness on account of the risk to the souls and general social well-being of the men of the diocese of Tournai, and in response to frequent appeals.[6] And on the whole, the pope expressed himself dependent in the cause on the cooperation of both the neighbouring bishops and metropolitan as well as the secular princes.

Taken together, the letters catalogued above concerning the *causae maiores* handled by the

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[1] See above, on primacy *arengae*.
[2] *PL*, Eugene III, no. 316; this was repeated in *PL*, Eugene III, no. 344; see also, on this case, *PL*, Eugene III, no. 339; *IP* 5, *315/1; see also, *IP* 5, *250/23, *320/4, *320/6; JL 2, 58.
[3] Similarly, the pope approved the canonisation of the former emperor Henry II only with the counsel of several visiting prelates: *PL*, Eugene III, no. 93 (*Bambergensia*, no. 35; JL, 8882).
[4] *PL*, Eugene III, no. 96, 97, 98, 99, 126; *Historiae Tornacenses*, 345-46 (JL, 8889, 8890); *EPRI*, no. 194 (JL, 8888), 195 (JL, 8887), 200 (JL, 9079); see also, *Historiae Tornacenses*, 340-44; *Herimanni liber de restauratione S. Martini Tornacensis*, 318-27, esp. 326.
[5] *PL*, Eugene III, no. 126.
[6] *PL*, Eugene III, no. 96.

papacy in the decade 1143-53 represented approximately less than one-fifth of the total extant papal letters of the period. Far more than the *causae maiores*, rather, the business of the curia around mid-century was predicated primarily upon the right which the pope's *primatas* afforded him and his court as the ultimate refuge of all appellants, not merely fellow bishops or those carrying the most grave causes; and increasingly by mid-century as a court of omnicompetence and first instance for all men far and wide. Indeed, most of the major causes themselves were clearly brought to the curia solely on the initiative of appellants and other plaintiffs—even upon the weightiest matters of Church organisation and administration or even major spiritual questions the pope and curia almost never operated *ex officio*, that is, on their own initiative. In any case, they lacked the administrative and technological apparatuses to do, except by way of legates or in response to rumour or report. The papacy vis-à-vis its central court in this period administered principally as a responsive and protective office. And including invariably the hundreds of causes involving one or more bishops as parties in which the pope or curia became implicated—cases which solely on account of the episcopal nature of the party could be deemed to have been *maior*—the substantive nature of the causes *in toto* were predominantly of a minor or at least temporal nature, while as often as not they were to some extent delegated back to the provinces into the hands of the episcopate through a largely still ill-defined process and procedure.

2 *THE PAPACY AND CHURCH: THE CARDINALATE, EPISCOPATE, AND RELIGIOUS*

The rise of the college of cardinals in the first half of the twelfth century is well attested in the historiography, and need not be recounted here in any length. It is sufficient to observe that, by mid-century, the medieval cardinalate's accumulation of influence in the governance of the papal office and Church was nearly complete, as it members had now become practically the 'senators' of the Roman Church, or 'hinges (*cardines*)' upon which the door of the Church swung. Ultimately, by the end of the thirteenth century, the power of the cardinalate within the curia would become increasingly eclipsed by an emerging doctrine of papal autocracy, an ecclesiology reflected increasingly through the decretalists of the thirteenth century. In the meantime, the college would share in the pope's evolving plenitude of power, reflecting the general culture of the period of emerging corporate bodies and concepts throughout the orders of society. At the same time, no constitutional or canonistic doctrine defining the role of the college was ever fully developed in this period and into the thirteenth century. Both of these factors are reflected in the papal record for the immediate decade at hand, 1143-53, which presents the members of the college of cardinals as fully integrated into the business of the papacy and curia, while providing basically nothing in the way of theoretical statements as a basis of its rights to be so included or on the existence of its corporate structure.

In their function, the cardinals by the mid-twelfth century had basically lost their primary liturgical importance. Early on they had been commissioned as legates to handle important political business, and they remained vital in the participation of political decisions at the curia as advisors in the middle and later twelfth century, a practice which had been established in the pontificates of Paschal II and Calixtus II in the final stages of the Investiture Conflict and continued by Innocent II in the turmoil of the schism of the 1130s.[1] The function of the cardinals

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[1] On the rise of the cardinalate from the end of the eleventh century, see, W. Maleczek, *Papst und Kardinalskolleg von 1191 bis 1216: Die Kardinäle unter Coelestin III. und Innocenz III* (Publikationen des Historischen Institut beim Österreichischen Kulturinstitut in Rom 1/6: Vienna, 1984), esp. 205-86; I.S. Robinson, *Papacy*, ch. 2, esp. 90-120; B. Tierney, *Foundations*, esp. 68-88, 149-53; S. Kuttner, '*Cardinalis*: The History of a Canonical Concept,' *Traditio* 3 (1945), 129-214, here at, esp. 173-97; H.-W. Klewitz, 'Die Entstehung des Kardinalkollegiums,' *Reformpapsttum und Kardinalkolleg* (Darmstadt, 1957), 9-134; N. Zacour, *Cardinals' View*, 413-38; W. Ullmann, *Growth*, 319-25; G.B. Ladner, *Medieval Thought*, 403-22; K. Pennington, *Papal Monarchy*, 71, 194; U.-R. Blumenthal, 'Opposition to Pope Paschal II: Some Comments on the Lateran Council of 1112,' *Papal Reform and Canon Law in the Eleventh and Twelfth Centuries* (Aldershot, 1998), 82-98; H.V. White, *Gregorian Ideal*, 329-35. On the rise of the 'consistory' and the advisory role of the cardinalate, see below, ch. 4.2.

as political agents, diplomats, and territorial administrators would take on even greater importance from the middle decade of the twelfth century, as evidenced by the growing importance of the papal chancellor, and, especially, from mid-century, the rise of the apostolic *camera* under Cardinal Boso.[1] Accordingly, for example, in the period 1143-53, but especially under Eugene III, the first real sustained and successful efforts were made at building up a fortress-policy and feudal relationships in the papal Patrimony. As agents in this 'policy,' the pope used both his local 'feudatories,' especially the Frangipani and Pierleoni, and especially cardinals and other curials.[2] This extended naturally to diplomatic relations with the great secular powers, especially Roger II of Sicily and the German crown, with whom each pope in this period used cardinals as his principal agents and negotiators.[3]

Ultimately, Alexander III's election as pope in 1159 would be orchestrated and manipulated by a faction of cardinals under his predecessor, Adrian IV, vaguely coalescing around political and territorial principles which leaned towards a Sicilian alliance or a more independent 'policy' against the increasingly manifest ambitions of the Hohenstaufen emperor, who was supported by Alexander's rival, the antipope Victor IV, and certain others in the college.[4] But whether or not the formation of pro-Sicilian and pro-German parties in the college under Adrian and Alexander and their respective 'policies' severely affected the pope's orientation to the college and dependence upon certain groups of cardinals is, for events after 1153, beyond the scope of this

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[1] On the papal *camera* or chamberlain and its origins and growth, see, e.g., F. Geisthardt, *Boso*; B. Zenker, *Mitglieder*, 149-52; J. Sydow, *Cluny und die Anfänge der apostolischen Kammer*, 45-66; W.E. Lunt, *Papal Revenues in the Middle Ages* (New York, 1934), 8-15; I.S. Robinson, *Papacy*, 93-96, 241-72.

[2] See, e.g., *PL*, Lucius II, no. 33; *PL*, Eugene III, no. 583 (*IP* 3, 251/1; JL, 9726/9727); *IP* 2, 171/1, 171/3, 158/13; *APRI* 2, no. 377 (Theiner 1, 13, no. 15; JL, 8465); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03/144-45); *LC*, 403-04, no. 124 (*Antiquitates* 4, 241-42; *IP* 3, 482/1), *LC*, 382-83, no. 92 (Theiner 1, 14-15, no. 18; *Antiquitates* 3, 777-78; *IP* 1, 187/5), *LC*, 383, no. 93 (*Antiquitates* 3, 779; *IP* 1, 192/2); *APRI* 3, no. 114 (JL, 9732); *LC*, 383-84, no. 94 (Theiner 1, 14, no. 17; *IP* 2, 207/3). For reference to the Frangipani in the papal letters of 1143-53, see, *PL*, Lucius II, no. 40; *IP* 1, *192/3, *IP* 2, *188/1, *IP* 8, *44/166; Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465); *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14), *LC*, 383, no. 93 (*Antiquitates* 3, 779; *IP* 1, 192/2), *LC*, 383-84, no. 94 (Theiner 1, 14, no. 17; *IP* 2, 207/3), *LC*, 428, no. 172 (*IP* 1, 191/1; JL, 8710); see also, JL, 9978 (P-H, *Iter*, 253). For reference to the Pierleoni, see, *PL*, Lucius II, no. 40; *Two Cities*, Bk. 7. XXXI. 331-32 (*PL*, Lucius II, no. 83; Mansi 21, 609; JL, 8684); Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465); *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14).

[3] See, e.g., *IP* 8, *44/166-68, 179/252 (P-H *Iter*, 236; JL, 8655); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03/144-45); *HP*, 45; Romuald of Salerno, *Chronicon*, 228; *Annales Casinenses*, 310; *Annales Ceccanenses*, 283; see also, I.S. Robinson, *Papacy*, 115-16, 388; D. Matthew, *Norman Kingdom*, 55; on Alexander III and the incident at the imperial diet of Besançon in 1157, see most recently, A.J. Duggan, *The Pope and the Princes*, 127-34.

[4] On the papal temporal 'policy' from the mid-twelfth century, see the bibliographical information above, in the introduction; for the cardinals' role in this 'policy,' especially for the later period of the twelfth century, see W. Maleczek, *Papst und Kardinalskolleg*, 312, 336-50.

thesis.[1] In the end, these were developments of immediate political and territorial import which, though they had their beginnings in the immediate period here under discussion, cannot be treated in sufficient detail. What is important here, however, is that the figures associated with these factions almost all had their start in the curia under Celestine II, Lucius II, or Eugene III.

Conversely, nonetheless, the cardinals in the decade 1143-53 could also be charged with the weightiest spiritual matters, though on the whole such cases were exceedingly rare.[2] Thus, in March 1146 Eugene III wrote to the bishop and canons of the church of Bamberg concerning their petition for the canonisation of Emperor Henry II: 'we have delegated from our side our venerable brothers, [the cardinal-bishop Theodwin of S. Rufina/Porto and cardinal-priest Thomas of S. Vitale], for the purpose of the various business in those parts, and have enjoined upon them *viva voce* to proceed to your church and, concerning the life and miracles of King Henry, inquire diligently into the truth of the matter and notify us through their letters.' The letter continued by informing the bishop and chapter that the decision to proceed in the canonisation was being based to a large extent upon 'the attestation of our same brothers and many religious and discreet men'—this was in fact the only known case of a canonisation referred to the pope or curia in this period.[3] Two years later, according to Otto of Freising, as noted above, the cardinals even claimed in the course of the trial of Gilbert de la Porrée the special right to resolve, along with the pope, all questions concerning Catholic faith.[4]

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[1] See, e.g., I.S. Robinson, *Papacy*, 116-18, 389-90, 463-65, who summarised the traditional interpretation that from 1155, after Frederick I's failed southern Italian campaign, Popes Adrian IV and Alexander III, with their now pro-Sicilian or anti-German 'policies,' were compelled to rely upon their own coteries of cardinals who shared or supported their 'policies' for all subsequent political 'policy.' Conversely, it is the opinion here that these temporal 'policies' had some continuous development from 1139: the popes always preferred independent action in central Italy; as such, 'policy' was continually altered by shifting political fates and circumstances; cf., A.J. Duggan, *The Pope and the Princes*, 105-55.

[2] It has been noted that in the course of the twelfth century cases of canonisation, which from the late eleventh century seem to have been handled by the reform papacy in the papal synod, were increasingly decided by the pope and cardinals alone 'in consistory;' on this, see, E.W. Kemp, *Canonization and Authority in the Western Church* (Oxford, 1948), 67-97; I.S. Robinson, *Papacy*, 110-13; W. Maleczek, *Papst und Kardinalskolleg*, 309. For cases of canonisation handled under Innocent II, two were approved in a general council: *PL*, Innocent II, no. 61, col. 110 (JL, 7496), no. 392, col. 450-51 (JL, 8007). Two other cases under Innocent II suggested a more informal procedure, one involving the pope with the advice of the cardinals as well as other 'archbishops and bishops' (*PL*, Innocent II, no. 207, col. 256 [JL, 7742]); and another involving the pope merely 'with our brethren, the bishops and cardinals, consulting' (*PL*, Innocent II, no. 502, col. 568 [JL, 8182]). The consistent use under Innocent II of the ambiguous phrase 'our brethren, the bishops and cardinals,' is always problematic, insofar as the question of whether 'bishops' referred exclusively to cardinal-bishops: see, e.g., *PL*, Innocent II, no. 14, col. 62-64, no. 46, col.96, no. 84, col. 123-25, no. 137, col. 180-81, no. 192, col. 242-44, no. 207, col. 256, no. 212, col. 257, no. 267, col. 298-99, no. 394, col. 452-53, no. 398, col. 459-62, no. 399, col. 462, no. 435, col. 500-01, no. 458, col. 529-30, no. 502, col. 568. The phrase itself, for instance, occurred relatively rarely in the period 1143-53: *PL*, Eugene III, no. 577; *IP* 2, 158/13; *APRI* 2, no. 383 (JL, 8659); *APRI* 3, no. 114 (JL, 9732); Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465); Wibald, no. 347 (*Constitutiones*, 188-89, no. 134; *IP* 1, 180/9).

[3] *PL*, Eugene III, no. 93 (*Bambergensia*, no. 35; JL, 8882); see also, *APRI* 3, no. 82 (*PL*, Eugene III, no. 141; JL, 8975).

[4] On this episode, see, ch. 1.3.

This same trial, on the other hand, and the causes contributing to the cardinals' purported outburst, involved certain personal resentments on the part of the college vis-à-vis Bernard of Clairvaux, and was resolved with little to no actual doctrinal definition. Not surprisingly, therefore, the development of the expansion of the role and authority of the cardinalate became a subject which, after 1148, caused Bernard himself a great degree of disquiet. Indeed, despite the cardinals' claim to judge the orthodoxy of Gilbert's doctrines, Bernard perceived their actual role in the governance of the papacy and curia by this point in time as scarcely spiritual at all. For Bernard, the cardinals in Eugene III's administration functioned basically as worldly agents who opportunistically exploited their office and position to their own ends. Accordingly, in the *De consideratione*, while Bernard did acknowledge the actual influence and power of the cardinalate, he made sure that the pope understood that the cardinals did not possess an inherent share in the pope's authority, but only that which he alone directly delegated to them. And in this, according to the abbot, the pope deserved the brunt of the blame for his cardinals' corruption and their corruptive influence, especially as he himself had chosen them for promotion, or, what was worse, had allowed them to choose themselves through their own guile or the favour of others.[1] But, as suggested, Bernard had also decidedly personal motives for impugning the quality and place of the cardinalate, within which, by 1148, there is evidence of considerable antipathy and opposition towards the abbot. And in this, the cardinals' opposition would win out.

According to John of Salisbury, by 1148 the cardinals 'were angry towards the abbot;' and, as a result of Bernard's stratagems against Gilbert de la Porrée, 'they agreed to support Gilbert's cause, saying that Bernard had attacked Master Peter [Abelard] in the same way.' The cardinals 'suspected, or pretended to suspect, that Bernard wished to draw to his party the English and Gallic Churches, against whose subscriptions the apostolic see could effectively define nothing at that particular place and time, nor absolve Master Gilbert without condemnations of sedition.' And in general, although 'it was certain that certain of the cardinals were very much invidious towards him, and could neither refrain from detractions,' as far as John of Salisbury could remember, 'there was not one cardinal, except Alberic, bishop of Ostia, who was not diligently opposed to the abbot in spirit and deed.'[2] In fact, in corroboration of John of Salisbury's assertions, only five cardinals promoted to the college before 1138 were still active in 1148.[3] At least nine further cardinals promoted to the college before 1143 were active in 1148.[4] Conversely,

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[1] *De consideratione*, Bk. 4. IV. 9-12 (120-25), Bk. 4. V. 13-16 (126-29); cf., *De consideratione*, Bk. 3. III. 13 (94-96).

[2] *HP*, 19-21; see, in general, *HP*, 14-41.

[3] Cardinal-bishops Conrad and Theodwin; and Cardinals Guido(3), Gregory(2), and Odo. For the titles of these and the following cardinals, and for the papal letters of the period 1143-53 in which they appeared, see, Appendix 2.

[4] The cardinal-bishops Imar and Alberic; and Cardinals Hubald, Guido(2), Gregory(3), Gilbert, Hubald(3), Nicholas(2), Octavian; and possibly an unknown Cardinal Rainald.

at least twelve cardinals promoted to the college before 1143 who were active at some point in the pontificates of Celestine II, Lucius II, and Eugene III died before 1148.[1] If Bernard of Clairvaux had indeed had early on in his career several confidants in the curia, by 1148 most of these cardinals had passed away, except, as John of Salisbury stated plainly, the Cluniac Cardinal-bishop Alberic of Ostia, who died before the year 1148 was out.[2]

In fact, in many of his own policies after 1140, as in the case of Gilbert de la Porrée, Bernard found himself opposed to members of the college: in 1143 Bernard wrote separately to Celestine II[3] and to all of the cardinals against William Fitzherbert, archbishop-elect of York;[4] and ca. 1140 he wrote numerous letters to the cardinals in condemnation of Peter Abelard,[5] who, as

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[1] The cardinal-bishop Stephan; and Cardinals Peter(4), Thomas, Goizo, Peter, Rainier, Gregory, Hubald(4), Gerard(4), Peter(5), Peter(6), and Guido(6).

[2] See, B. Jacqueline, *Saint Bernard de Clairvaux et la curie romaine*, 27-44. In fact, between 1143 and 1145 Bernard of Clairvaux addressed at least five letters to Cardinal-bishop Alberic: Bernard of Clairvaux, *Letters*, no. 219 (B.S. James, no. 293), 230 (B.S. James, no. 219), 231 (B.S. James, no. 310), 232 (B.S. James, no. 311), 527 (B.S. James, no. 191); another letter of Bernard concerned the same Alberic, see, Bernard of Clairvaux, *Letters*, no. 241 (B.S. James, no. 317). Otherwise, at least fourteen of Bernard's letters were addressed to the chancellor Cardinal-deacon Haimeric of S. Maria nuova (1123-41): Bernard of Clairvaux, *Letters*, no. 15, 20, 48, 51, 52, 53, 54, 157, 162, 181, 311, 316, 338, 367 (B.S. James, no. 16, 21, 51, 54, 55, 56, 57, 163, 166, 223, 374, 377, 249, 415). At least six of Bernard's letters between 1142 and 1144 were addressed to the Cistercian cardinal-bishop Stephan (Bernard of Clairvaux, *Letters*, no. 219 [B.S. James, no. 293], 224, 230 [B.S. James, no. 219], 231 [B.S. James, no. 310], 232 [B.S. James, no. 311], 331); at least five letters between 1152 and 1153 to Cardinal-bishop Hugh, originally a monk at Clairvaux (Bernard of Clairvaux, *Letters*, no. 287 [B.S. James, no. 414], 290 [B.S. James, no. 355], 296 [B.S. James, no. 361], 306 [B.S. James, no. 373], 307 [B.S. James, no. 372]); at least four letters between 1142 and 1145 to the Cluniac cardinal-bishop Imar, who would become a supporter of the antipope in 1159 (Bernard of Clairvaux, *Letters*, no. 219 [B.S. James, no. 293], 230 [B.S. James, no. 219], 231 [B.S. James, no. 310], 232 [B.S. James, no. 311]; another letter of Bernard concerned the same Imar, see, Bernard of Clairvaux, *Letters*, no. 307 [B.S. James, no. 372]); at least three letters between 1140 and 1147 to the Pisan papal chancellor Cardinal-deacon Guido(3) Moricot de Vico (Bernard of Clairvaux, *Letters*, no. 334 [B.S. James, no. 246], 367 [B.S. James, no. 415], 368 [B.S. James, no. 416]); and one letter each between 1151 and 1153 to Cardinal-priest Henry, previously a monk at Clairvaux (Bernard of Clairvaux, *Letters*, no. 295 [B.S. James, no. 360]); ca. 1145 to Cardinal-priest Robert Pullen, chancellor before Guido(3) (Bernard of Clairvaux, *Letters*, no. 362 [B.S. James, no. 316]; another letter of Bernard concerned the same Robert, see, Bernard of Clairvaux, *Letters*, no. 205 [B.S. James, no. 271]); and ca. 1140 to Cardinal-deacon Gregory, a supporter of Innocent II during the schism (Bernard of Clairvaux, *Letters*, no. 333 [B.S. James, no. 245]). In other letters to cardinals, Bernard wrote reprovingly to Guido(6), probably between 1140 and 1143, concerning that cardinal's apparent support of Arnold of Brescia: Bernard of Clairvaux, *Letters*, no. 196 (B.S. James, no. 251). Bernard wrote to Celestine II as a cardinal only twice, in his cause against Peter Abelard, whom Celestine supported: Bernard of Clairvaux, *Letters*, no. 192 (B.S. James, no. 240), 526 (B.S. James, no. 190). Similarly, Bernard wrote to Celestine as pope in only two known letters: Bernard of Clairvaux, *Letters*, no. 235 (B.S. James, no. 202), 358 (B.S. James, no. 304). The same held true for Lucius II, to whom Bernard wrote only twice in the course of his cardinalate and only once, in known letters, in the course of his pontificate: Bernard of Clairvaux, *Letters*, no. 219 (B.S. James, no. 293), 520 (B.S. James, no. 204), 525 (B.S. James, no. 189).

[3] Bernard of Clairvaux, *Letters*, no. 235 (B.S. James, no. 202).

[4] Bernard of Clairvaux, *Letters*, no. 236.

[5] Bernard of Clairvaux, *Letters*, no. 188, 192 (B.S. James, no. 240), 193, 331, 332, 333 (B.S. James, no. 245), 334 (B.S. James, no. 246), 335, 338 (B.S. James, no. 249); see also, to Innocent II on the same matter, Bernard of Clairvaux, *Letters*, no. 194, 330.

John of Salisbury noted, did not lack support in the college.[1] With the failure of the Second Crusade, furthermore, the prestige of the great abbot would soon begin to wane;[2] and ultimately it was the cardinals themselves, and not Bernard, who had the better estimation of the real and lasting place of the cardinalate in the governance of the Church at mid-century. Nonetheless, matters which concerned articles of faith, or dogma, were altogether seldom aspects which affected the curia's administration in this period. The cardinals' authority, though obviously great, was exercised as a matter of routine in quite different roles, as Bernard himself observed, especially as judges of far less spiritual controversies and as temporal agents and political diplomats of the Roman Church. Indeed, the expanding role and place of the cardinalate in the business of the papacy was evidenced as such in several papal *arenga* statements of the period 1143-53:[3] 'Although from the office of the apostolate enjoined upon us by God we are debtors to all of the sons of the Catholic Church, it becomes us to be at hand with a more ready zeal of charity for our brother cardinals who frequently assist us in the servitude of St. Peter and, where it is necessary, also to prefer their own persons.'[4] In April 1148 the pope declared to the abbot and brethren of the monastery of St. Sauveur, Aniane: 'Since we are required by our office to carry solicitude for the sake of all of the churches, it is necessary that we provide for their peace and tranquillity with the means by which we are able.' In this case, the 'means by which we are able' referred to the delegation of judicial causes to members of the cardinalate: 'Therefore...wishing to impose an end upon the controversy which has been agitated for a long time between you and the canons of St. Sépulcre...we have committed the cause itself to our esteemed sons, the cardinal-priest Julius and the cardinal-deacon Jacinth, to be heard and terminated.'[5] Similarly, in May 1146

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[1] When it served his own interests, Bernard could acknowledge the eminent authority of the cardinals; cf., Bernard of Clairvaux, *Letters*, no. 188 (B.S. James, no. 238), 230 (B.S. James, no. 219). See also, Bernard of Clairvaux, *Letters*, no. 243 (B.S. James, no. 319), a letter to the Romans bewailing the crimes and atrocities which were taking place in the City in the context of revolution following the election of Eugene III: *in rebus et domibus suis, vestris manibus spoliati sunt cardinales atque episcopi ministri Domini.* In the Abelard case, Bernard's exaltation of the authority of the cardinals was justified, as Innocent II and the cardinals responded favourably; see, *PL*, Innocent II, no. 447, col. 515-17 (JL, 8148); see also, *PL*, Innocent II, no. 448, col. 517; I.S. Robinson, *Papacy*, 108-09.

[2] For Bernard of Clairvaux's self-apology vis-à-vis the failure of the crusade, see, *De consideratione* Bk. 2. I. 1-4 (47-52); for the apology of Otto of Freising, who saw it as a salubrious penitential exercise, see, Otto of Freising, *Gesta*, 103-06; see also, e.g., M. Gervers, 'Donations to the Hospitallers in England in the Wake of the Second Crusade,' *The Second Crusade and the Cistercians*, ed. M. Gevers (New York, 1992), 155-61; B.M. Bolton, 'The Cistercians and the Aftermath of the Second Crusade,' *The Second Crusade and the Cistercians*, ed. M. Gevers (New York, 1992), 131-40, esp. 131, 135.

[3] See, Appendix 1, no. 59, 146, 163, 165, 167, 182, 254. Also, Appendix 1, no. 214 (*APRI* 3, no. 63 [*IP* 1, 27/17; P-H *Iter*, 238; JL, 8711]) (to the prior and brethren of the church of the Lateran). For *arengae* of letters issued by cardinals, see, Appendix 1, no. 80, 129, 145, 147, 150, 246, 248, 265. For those issued to cardinals, see, Appendix 1, no. 163 (Römische Analekten, 35-36, no. 3 [*IP* 1, 77/20]), 272 (*PL*, Eugene III, no. 577).

[4] Appendix 1, no. 163 (Römische Analekten, 35-36, no. 3 [*IP* 1, 77/20]—6/4/45); see similarly, e.g., Appendix 1, no. 167 (*APRI* 2, no. 383 [JL, 8659]—10/27/44).

[5] Appendix 1, no. 59 (*EPRI*, no. 202 [JL, 9237]—4/12/48).

the pope wrote to the abbot of the monastery of Lérins and his brethren that, 'Since through us we are not able to administer all of the various ecclesiastical business, we commit some, according to the time and place, to be terminated to our brethren concerning whose discretion we trust.' Accordingly, the pope noted that their case with the church of Vintimiglia over a certain church 'has been terminated from our mandate' by a cardinal-priest and two cardinal-deacons.[1]

In fact, in the papal record of the period 1143-53 the cardinals appear primarily as auditors or judges of clerical disputes either at the curia or in the provinces in their capacity as papal legates. In total, reference to 'cardinals' occurred in at least 175 of the total papal letters of the same period;[2] 106 (sixty-one percent) of these letters also concerned clerical *controversiae*.[3] Of

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[1] Appendix 1, no. 91 (*APRI* 1, no. 204 [JL, 8919]—5/13/46).

[2] That is, not including those letters which merely or broadly referred to 'our brothers,' as in the clause *fratrum nostrorum consilio* and the like—only when 'cardinals' specifically or specific cardinals were mentioned; also, not including subscriptions or *datum* or *signum* clauses—only the substantive parts of the letter.

[3] Thirty-one occurred under Celestine II and Lucius II: *PL*, Celestine II, no. 25, 44; *PL*, Lucius II, no. 40, 61; *IP* 2, *158/11; *IP* 3, *411/7; *IP* 6/1, 79/21, *79/22, 78/17, 79/24, 80/25, *79/23, *80/26, 267/16, *288/9; *IP* 6/2, 18/4; *APRI* 2, no. 379 (JL, 8571), 380 (JL, 8632), 382 (JL, 8654), 383 (JL, 8659), 384 (JL, 8660); *APRI* 3, no. 55 (JL, 8516); PUF2, no. 24, 27; PUF6, no. 54; PUF9, no. 42; PUP, no. 44, 45; PUF7, Nach. Gott., no. 28, 29, 30. For PUF7, Nach. Gott., no. 28, 29, 30, the editor, W. Wiederhold, gave the date 1138-46; these letters, however, almost certainly were written during the French legation ca. 1144-45 of Cardinal-bishop Alberic of Ostia. Twenty-six letters occurred under Eugene III through 1146: *PL*, Eugene III, no. 35, 38, 39, 43, 123, 125; JL, 8905 (*laudatum* in *APRI* 3, no. 74 [JL, 8906]); *IP* 5, *476/20; *IP* 6/1, *325/10; *IP* 6/2, *14/27, 19/9, *365/1; *IP* 7/1, 236/14, *273/2; *IP* 7/2, *108/3; *APRI* 1, no. 204 (JL, 8919); *EPRI*, no. 193 (JL, 8877); PUE2, no. 45, 52; PUE3, no. 48; PUF5, no. 76; PUS2, no. 52; PU in Piemont, no. 4 (*IP* 6/2, 14/28); Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4), 9 (*IP* 5, 464/20); Römische Analekten, no. 3, 35-36 (*IP* 1, 77/20). Eight occurred under Eugene 1147-8 July 1148: *PL*, Eugene III, no. 280; *IP* 1, 80/6; *IP* 4, 71/28; *EPRI*, no. 202 (JL, 9237); *EPRI*, no. 202/JL, 9238 (*laudatum* at the end of *EPRI*, no. 202); Cartulaire de l'église Notre-Dame de Paris 1, 27, no. 6 (JL, 9073) (see, 28-29, no. 8); PUF1, no. 55; PUP, no. 46. And forty-one occurred after 8 July 1148, including undated letters: *PL*, Eugene III, no. 311, 335, 342, 450, 458, 462, 476, 533; *IP* 1, 51/6, 51/7; *IP* 2, 44/12; *IP* 3, *284/19; *IP* 5, 278/7, 315/3, *62/212, *153/2, *278/5; *IP* 6/1, 188/1, *361/22, *393/7, 381/32, *60/168, 60/169, *268/19, 268/20, *325/12, *339/1; *IP* 6/2, *63/7, *382/2; *IP* 7/1, *239/23; *IP* 8, *96/2; *APRI* 3, no. 94 (JL, 9478), 96 (JL, 9479); PUF4, no. 63 (JL, 9378); PUF3, no. 32, 33; PU in Pisa, no. 4 (*IP* 5, 62/213); PU in Ligurien, no. 1 (*IP* 6/2, 382/1); *Antiquitates* 3, 1167 (*IP* 3, 326/32); *Decretales*, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 369-70, no. 941 (JL, 9393) (6/1/50). For the remaining sixty-nine letters, nineteen occurred under Celestine II and Lucius II: *PL*, Celestine II, no. 27 (JL, 8480); *PL*, Lucius II, no. 26, 68, 95; JL, 8713; *IP* 4, *112/1; *IP* 5, 344/36, *380/5, *380/6; *IP* 6/1, *276/7, *276/8; *IP* 7/1, *288/1; *IP* 8, *44/166; Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465); *LC*, 403-04, no. 124 (*Antiquitates* 4, 241-42; *IP* 3, 482/1); PUF5, no. 58, 59, 61; PUF6, no. 53. Ten letters occurred under Eugene III through 1146: *PL*, Eugene III, no. 1, 7 (JL, 8729), 93 (*Bambergensia*, no. 35; JL, 8882), 118, 119, 147, 148; JL, 8924 (*PL*, Eugene III, no. 113); *IP* 4, 46/2 (Mansi 21, 695; *Antiquitates* 4, 141 n.); PUF7, no. 56. Nine occurred under Eugene 1147-8 July 1148: *PL*, Eugene III, no. 204, 297, 298; JL, 9208; *IP* 6/2, 23/9, 119/6, 135/16, *192/6; *APRI* 1, no. 213 (JL, 9119). And thirty-one occurred after 8 July 1148 and undated: *PL*, Eugene III, no. 316, 319, 363, 376, 504, 568, 577, 583 (*IP* 3, 251/1; JL, 9726/9727); *IP* 2, *147/2, *147/3, 158/13, 171/1, *169/5; *IP* 3, 4/14; *IP* 4, *150/9; *IP* 6/2, *215/10; *IP* 9, 77/1; *APRI* 1, no. 227 (JL, 9672); Wibald, no. 347 (*Constitutiones*, 188-89, no. 134; *IP* 1, 180/9); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45); *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14), *LC*, 382-83, no. 92 (Theiner 1, 14-15, no. 18; *Antiquitates* 3, 777-78; *IP* 1, 187/5), *LC*, 383, no. 93 (*Antiquitates* 3, 779; *IP* 1, 192/2), *LC*, 383-84, no. 94 (Theiner 1, 14, no. 17; *IP* 2, 207/3); PUE3, no. 82, 83; Nachträge zu den PU in Italiens 5, no. 10 (*IP* 5, 477/26); Kanonistische Ergänzungen zur *Italia Pontificia*, no. 66 (*IP* 5, 236/11); Nachträge zu den römischen Berichten, no. 8 (*IP* 1, 141/31); PU in

these letters, furthermore, only thirteen did not concern either clerical *controversiae* or temporalities.[1] Moreover, of the sixty-six to sixty-eight individual members of the college in the period 1143-53, up to the death of Eugene III, identified in B. Zenker's prosoprographical study of the college between 1130 and 1159,[2] I have identified at least forty-four (sixty-five to sixty-seven percent) in the papal letters of the same period; while at least thirty-eight of these cardinals have been identified in papal letters concerning clerical *controversiae*: eighty-six percent of the total cardinals identified in the letters of the period; fifty-six to fifty-eight percent of the total known cardinals in this period. Conversely, at least thirty-three different active cardinals can be identified in papal letters not concerning *controversiae*: seventy-five percent of the total cardinals identified in the letters of this period; forty-nine to fifty percent of the total known cardinals of this period.[3]

Number of Papal Letters:[4]		Not Concerning Clerical *Controversiae*:	Concerning Clerical *Controversiae*:	Not Concerning Clerical *Controversiae* or Temporalities:	Total:
Cardinals Active 1143-53 Identified in the Papal Letters of the Same Period:	44	89	169	8	258
Known Cardinals Active 1143-53[5] Not Identified in the Papal Letters of the Same Period:	22-24	0	0	0	0
Former Cardinals:	6	4	8	4	12
Unidentified Cardinals:		4	10	1	14
'Cardinals'—Broadly:[6]		9	2	1	11
Total:	72-74	106	189	14	295

Furthermore, while the membership of the college in this period appears to have been

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Campanien, no. 10 (*IP* 2, 147/4). See also, *HP*, 80-82 (*IP* 8, *46/175; *IP* 9, *172/1); PU in Turin, no. 13 (*IP* 6/2, 174/14).

[1] Six letters occurred under Celestine II and Lucius II: *PL*, Celestine II, no. 27 (JL, 8480); *PL*, Lucius II, no. 95; JL, 8713; *IP* 5, *380/5, *380/6; PUF5, no. 61. Five occurred under Eugene III through 1146: *PL*, Eugene III, no. 1, 7 (JL, 8729), 118, 119; JL, 8924 (*PL*, Eugene III, no. 113). One occurred under Eugene 1147-8 July 1148: JL, 9208. And one occurred after 8 July 1148, including undated letters: *PL*, Eugene III, no. 319.

[2] B. Zenker, *Mitglieder*.

[3] For complete prosoprographical references to the cardinals active in the period 1143-53 in the papal letters of the same period, and for brief biographies of the same cardinals, see, Appendix 2.

[4] That is, not including those letters which merely or broadly referred to 'our brothers,' as in the clause *fratrum nostrorum consilio* and the like—only when 'cardinals' specifically or specific cardinals were mentioned; also, not including subscriptions or *datum* or *signum* clauses—only the substantive parts of the letter.

[5] As identified by B. Zenker, *Mitglieder*.

[6] That is, an unspecified or vague reference to a 'cardinal.'

relatively well represented by members of the so-called 'new orders,' or houses that have been purported to have sympathised with those orders around this time, such as Abbot Peter the Venerable's Cluny, these members themselves were involved far more often in cases concerning clerical controversies, or else concerning the pope's own territorial affairs, as not.[1] Lawyers, likewise, were conspicuous in the cardinalate in this period. Celestine II himself was a *magister*; while two other *magistri* created by Innocent II were still active in this period.[2] Otherwise, Eugene III created at least five *magistri*,[3] all of whom became important figures in the college;[4] while Roland, the future pope Alexander III, was probably also a lawyer. In all, Innocent II promoted perhaps five lawyers with the title of *magister* to the college; Adrian IV would promote two; and Alexander III six.[5] It is tempting in this sense, I.S. Robinson noted, 'to emphasise the contrast between the papal curia of the late eleventh and earlier twelfth century and that of the later twelfth century: the former under the influence of the religious (firstly of old Benedictines and subsequently of the new orders), the latter under the influence of the lawyers. But is it important not to overlook the fact that some of the religious in the twelfth-century curia were also lawyers.'[6] In fact, at least three of the regular canons created by Eugene were *magistri*;[7] while Cardinal Thomas, created by Innocent II, was still active under Eugene, as was Roland, who again was probably a lawyer. In fact, six of the ten lawyers with the title *magister* who can be identified in

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[1] See, Appendix 2, for details and citations. Three cardinal-bishops, firstly, from 'old' Benedictine houses are certain, all created by Innocent II: Bishops Imar and Alberic, both from Cluny; and Theodwin, from Gorze. For the new orders, Lucius II, created by Honorius II, was perhaps from S. Frediano; and Thomas, a regular canon, was created by Innocent II. Celestine II created one religious, John, a regular canon from S. Frediano. Lucius II created two canons regular: Hubald(2)—like John, a relative of the pope—from S. Frediano; and Cardinal-bishop Gaurinus, from S. Maria Rheno. Lucius also created a Carthusian, the chamberlain Jordan. Eugene III created three fellow-Cistercians, all from Clairvaux: Cardinal-bishop Hugh; Henry; and Bernard(2). He also created at least six canons regular: Ildebrand and Guido(5) Puella, both from S. Maria Rheno; Bernard, from S. Frediano; Cardinal-bishop Nicholas, from St. Ruf, Avignon; Gerard(2), from the church of Liège; and Roland, who became a canon at Pisa. Of the possibly thirty-four cardinals still alive on the death of Eugene, at least eight were canons regular (23.5%). On the importance of the canons of S. Frediano, Lucca and S. Maria Rheno in Bologna in the curia in the twelfth century, see, T. Schmidt, *Kanonikerreform*, 216-21; B. Zenker, *Mitglieder*, 129-32, 144-45; I.S. Robinson, *Papacy*, 212, 217-20.

[2] Thomas and Hubald(3).

[3] Grecus, Ildebrand, Odo(2), Guido(5) Puella, and Bernard.

[4] See also, I.S. Robinson, *Papacy*, 107.

[5] B. Zenker, *Mitglieder*, 77-79, 83-84, 114, 116, 125-29, 136, 179-80; J.M. Brixius, *Die Mitglieder des Kardinalkollegiums von 1130 bis 1181* (Dissertation: Berlin, 1912), 61-67; I.S. Robinson, *Papacy*, 55, 106-07, 220-22; see also, B. Smalley, *The Becket Conflict and the Schools: A Study of Intellectuals in Politics* (Totowa, N.J., 1973), 143-44; C.R. Cheney, *Becket*, 70. The development of the curia into the 'omnicompetent court of first instance for the whole of Christendom,' as F.W. Maitland, *Canon Law*, 103, wrote, ensured that, according to I.S. Robinson, *Papacy*, 55, 'the lawyer-cardinals would remain indispensable to the papacy. The last four popes of the twelfth century had themselves been students of law: they inaugurated a series of lawyer popes which, with few exceptions, extended into the fourteenth century...The emergence of the lawyers as an influential group was the first of the two major developments which altered the character of the college of the cardinals in the late twelfth century: it was Alexander III's main contribution to the history of the college of cardinals.'

[6] I.S. Robinson, *Papacy*, 221.

[7] Bernard, Ildebrand, and Guido(5) Puella.

the college of cardinals before the schism of 1159 were also regular canons.[1] According to I.S. Robinson, these lawyer-canons 'may well have been more important to the curia as legal advisers than as promoters of the spiritual ideals of the regular canons.'[2]

In fact, while the evidence from the papal record itself of the period 1143-53, concerning a preponderance of legal causes, would seem to bear out this hypothesis, when examined closely, with an eye towards the respective natures of the cardinals, the record reveals no consistent or exact delineation of roles, beyond the fact that most cardinals served at some point in this period in some judicial capacity.[3] Thus, while the involvement of all cardinals, including even several subdeacons, in the temporal and judicial business of the curia was pervasive, it occurred with little to no correlation to the character or background of the individual cardinals vis-à-vis broader differences of profession, order, or 'spirituality.' The canon-lawyers and other lawyers in the cardinalate generally were well represented; and while they did not always appear consistently in their capacity as judges or auditors in suits, they appeared otherwise for the most part as agents in the curia's Patrimonial or political 'policy,' for which their legal expertise may have equally recommended them. On the other hand, this was the case equally with numerous cardinals not known as legal experts. The papacy in delegating its business to members of the college in most particular cases was probably operating upon bases or circumstances which are not fully discernable in the sources, or, perhaps, upon no particular basis. In sum, the papal sources have reveal no distinct pattern of delegation, beyond the fact that certain cardinals were used far more frequently than others, and that the business of the cardinalate reflected the business of the curia broadly in this period, which consisted primarily in the handling of suits, the administration of the papacy's own territorial 'policy,' and other non-spiritual affairs.

In total, a salient feature of the record of the cardinalate generally in this period is the overall inclusiveness of the college in the business, especially judicial business, and governance of the papacy: most known cardinals can be identified at least once in the papal letters; and of these in at least one letter concerning clerical controversies. Nor did *ordo* within the college *per se* appear to have been a critical factor in determining an individual cardinal's participation in papal business: certain cardinal-bishops were conspicuously absent,[4] with the more numerous diaconate represented pervasively and often. W. Maleczek, in his important study of the cardinalate in the last part of the twelfth century and into the pontificate of Innocent III, concluded that Celestine

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[1] Similarly, the eminent lawyer and future chancellor and pope, Gregory VIII, was originally a regular canon of St. Martin, Laon as well as the founder of a new order of regular canons in Benevento; see, B. Zenker, *Mitglieder*, 29-30, 77-78, 107, 112, 114, 125-26; I.S. Robinson, *Papacy*, 221-22.
[2] I.S. Robinson, *Papacy*, 222.
[3] For this, see, Appendix 2.
[4] See, e.g., Cardinals Gaurinus of Palestrina, Peter(3) of Albano, Stephan of Palestrina, and to a lesser extent Theodwin of S. Rufina/Porto.

III's so-called 'oligarchic policy' of delegating causes and legations diffusively and relatively evenly up and down the whole body of the cardinalate, with certain particularly favoured members excepted, was eventually replaced by Innocent by a practice of utilising far more exclusively in these roles a small, close-knit group of cardinals, mostly created by himself, including now even non-cardinals, especially chaplains. Thus, a government of broad participation was replaced by one of limited and relatively new but powerful influence.[1] The papal record of the period 1143-53, in fact, indicates that Celestine III's 'policy' was basically in operation already in the period in which that pope had begun his own long career in the college. Concomitantly, a diffuse number of different cardinals and others active in the period 1143-53 served on at least one occasion as papal legates in the provinces.[2] The period 1130-59 in particular seems to have witnessed a notable expansion in the numbers and functions of cardinal legates. According to B. Zenker, the sources of the period 1130-59 recorded 109 legations undertaken by fifty-one different cardinals—one-third of the membership of the college in this period.[3] During this period the phrase 'legate *a latere*' also acquired its definitive meaning in papal documents in reference to cardinal legates alone:[4] as a result, by no later than the later 1150s a cardinal legate *a latere* was distinct from and superior to a 'native' or archbishop legate.[5]

In the period 1143-53, of 148 letters referring explicitly or alluding to legates and legations outside of the papal Patrimony, at least 107 (seventy-two percent) concerned clerical *controversiae*. Discounting reference solely to the 'native' or archbishop legates, eighty-seven letters referred to clerical *controversiae*,[6] as opposed to thirty-six (twenty-nine percent) referring to

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[1] See, W. Maleczek, *Papst und Kardinalskolleg*, 325-58.
[2] On legates generally, see, I.S. Robinson, *Papacy*, 150-65.
[3] B. Zenker, *Mitglieder*, 229.
[4] Cf., JL, 7726, 10,354.
[5] See, I.S. Robinson, *Papacy*, 170-74. In total, of the twenty-eight papal letters of the decade 1143-53 referring to former or current archbishop 'legates,' twenty-four concerned clerical *controversiae*: *PL*, Lucius II, no. 40; *PL*, Eugene III, no. 48, 152, 447, 589; JL, 8999; *IP* 10, 447/1, *439/3, *451/2; PUE3, no. 79 (JL, 9547); PUE2, no. 64 (JL, 9433), 65 (JL, 9428), 69 (JL, 9546), 71 (JL, 9591), 72 (JL, 9611); PUF9, no. 42; PUF7, Nach. Gott., no. 36; PUS2, no. 67, 68; PUS1, no. 59, 61, 62; Archives historiques du Poitou 3, 9, no. 7 (apparently not in JL); Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256); for the remaining four letters, see, *PL*, Eugene III, no. 527; JL, 9467; PUS2, no. 66; *APRI* 3, no. 76 (*IP* 3, 325/29; *IP* 10, 383/42; JL, 8929). Twelve of these letters concerned the activities of papal judges delegate: *PL*, Lucius II, no. 40; *PL*, Eugene III, no. 152; PUE3, no. 79 (JL, 9547); PUE2, no. 64 (JL, 9433), 69 (JL, 9546), 71 (JL, 9591), 72 (JL, 9611); PUS2, no. 67, 68; PUS1, no. 59, 61; Archives historiques du Poitou 3, 9, no. 7 (apparently not in JL). For the individual archbishop legates, see, Appendix 2.2.
[6] *PL*, Celestine II, no. 31 (P. Classen, *Gerhoh von Reichersberg*, 341-42, no. 31; JL, 8484), 44; *PL*, Lucius II, no. 39, 40, 41, 43, 61, 79; *PL*, Eugene III, no. 35, 38, 39, 43, 123, 125, 152, 280, 281, 335, 342, 395, 450, 476; *IP* 3, *284/19, *411/7; *IP* 5, *476/20, *62/212, 315/3, *153/2, *278/5, 278/7; *IP* 6/1, 78/17, 79/21, *79/22, *79/23, 79/24, 80/25, *80/26, 267/16, 268/20, *268/19, *339/1, *361/22, *393/7, 381/32, *60/168, 60/169; *IP* 6/2, 18/4, *63/7, *14/27, 19/9, *382/2; *IP* 7/1, 236/14, *273/2; *IP* 7/2, *108/3; JL, 8905 (*laudatum* in *APRI* 3, no. 74 [JL, 8906]); *APRI* 2, no. 379 (JL, 8571), 380 (JL, 8632), 382 (JL, 8654), 383 (JL, 8659), 384 (JL, 8660); *APRI* 3, no. 55 (JL, 8516), 94 (JL, 9478), 96 (JL, 9479); PUE2, no. 45, 52; PUF2, no. 24, 27; PUF6, no. 54; PUF9, no. 42; PUF7, Nach. Gott., no. 28, 29, 30, 36; PUP, no. 44, 46; *Antiquitates* 3, 1167 (*IP* 3, 326/32); PU in Pisa, no. 2 (*IP* 5, 61/204), 4 (*IP* 5, 62/213); Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4); PU in Piemont, no. 4 (*IP* 6/2, 14/28); PU in Ligurien, no. 1 (*IP* 6/2, 382/1);

non-*controversiae*.[1] The term 'legate' or 'legation' itself, however, in reference to a current or contemporary papal legate, whether a cardinal or not, was explicitly mentioned in only forty-five total letters of the period 1143-53[2]—nineteen further letters referred explicitly to former papal 'legates.'[3] Of the more than 1,000 extant letters of the same period, not including papal privileges of protection, this therefore was scarcely an impressive sum. Furthermore, many of the letters referring to contemporary 'legates' were addressed by those legates themselves. Far less common in the letters was reference to papal legates *a latere*,[4] while in only one other letter was a papal or

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Decretales, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506). For the papal subdeacon legates, see, *PL*, Eugene III, no. 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2) (Anno 1145-53), a decretal letter addressed to the judges Arditio, a subdeacon of the holy Roman Church, and *Magister* Omnebene; Glanfeuil Forgeries, Appendix, 249, no. 9-9c (*Annales Casinenses*, 310; *IP* 8, *179/254) (Anno 1147), 251, no. 10 (*IP* 8, 180/257) (8/5/49), concerning another Roman subdeacon and monk of Montecassino, Simon, sent, perhaps twice, to arrange the election of an abbot in Glanfeuil and enforce its subjection to Montecassino (see, H. Bloch, *Glanfeuil Forgeries*, 174-213). See also, *IP* 7/2, *108/4 (December 1152): 'With Henry, a subdeacon of the holy Roman Church, legate of the apostolic see, receiving in place of Ubertus, abbot of S. Benedetto Po (di Polirone), Bishop Peter of Krk concedes to the monastery of S. Cipriano, Murano the church of S. Martino with the chapel of S. Apollinare. Dedocha and Radosclavus de castro Musclo, advocates of the church of S. Martino, do likewise.' See also, an *arenga* from early February 1153: *Et nos in eminenti sedis apostolicae specula, disponente Domino, constituti, Christi legatione fungentes, majoribus et minoribus, et sapientibus et insipientibus, in suo jure debitores existimus.* *PL*, Eugene III, no. 569 (2/9/53).

[1] The cardinal-bishop Conrad of Sabina was referred to as papal 'vicar' of Eugene III at Rome during the pope's exiles from the City in at least five different letters between May 1147 and July 1151: *PL*, Lucius II, no. 26, 68; *PL*, Eugene III, no. 93 (*Bambergensia*, no. 35; JL, 8882), 118, 119, 147, 148, 204, 319, 376, 504, 568; JL, 8924 (*PL*, Eugene III, no. 113), 9208; *IP* 4, *112/1, *112/2, 46/2 (Mansi 21, 695; *Antiquitates* 4, 141 n.), *150/9; *IP* 5, *380/5, *380/6, 344/36; *IP* 6/2, *215/10; *IP* 7/1, *288/1; *IP* 8, *44/166; *IP* 9, 77/1; Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45); *APRI* 1, no. 213 (JL, 9119), 227 (JL, 9672); PUF5, no. 58, 59, 61; PUF7, no. 56; PUF6, no. 53; Nachträge zu den PU in Italiens 5, no. 10 (*IP* 5, 477/26); Kanonistische Ergänzungen zur *Italia Pontificia*, no. 66 (*IP* 5, 236/11); Wibald, no. 17 (JL, 8461). For the papal subdeacon legates, see, *PL*, Eugene III, no. 231 (10/11/47), in which Eugene III ordered the bishop of Olomouc 'through apostolic writings and our esteemed son John, subdeacon of the holy Roman Church,' to attend the upcoming Church council, held ultimately at Reims. 'Furthermore, we more attentively commend to you our forenamed son, John, asking that you diligently assist and furnish works and counsel for our same son in arranging and composing a concord between the expelled duke and his brothers, if it should prove possible.' The subdeacon John was not actually called a 'legate.' See also, *IP* 9, *41/102 n.: a John, subdeacon of holy Roman Church and rector of Benevento, occurred in *chartae* of April 1152 and April 1157.

[2] *PL*, Lucius II, no. 39, 68, 79; *PL*, Eugene III, no. 147, 148, 395, 504; JL, 9208 (3/29/48); *IP* 5, 344/36, 315/3; *IP* 6/1, 60/169, 78/17, 79/21, 79/24, 267/16, 268/20, 381/32; *IP* 6/2, 18/4; *IP* 7/1, 236/14; *APRI* 1, no. 227 (JL, 9672); *APRI* 2, no. 379 (JL, 8571), 380 (JL, 8632), 383 (JL, 8659), 384 (JL, 8660); *APRI* 3, no. 94 (JL, 9478), 96 (JL, 9479); PUE2, no. 45; PUF2, no. 24, 27; PUF5, no. 58, 59, 61; PUF6, no. 53, 54; PUF9, no. 42; PUF7, no. 56; PUF7, Nach. Gott., no. 28, 29, 30, 36; Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53); Wibald, no. 17 (JL, 8461) (12/27/43); PU in Ligurien, no. 1 (*IP* 6/2, 382/1) (3/30/52); Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4), 10 (*IP* 5, 477/26).

[3] *PL*, Celestine II, no. 44; *PL*, Lucius II, no. 26, 40, 41, 43; *PL*, Eugene III, no. 123, 152, 280, 281, 342, 376, 450, 476; JL, 8924 (*PL*, Eugene III, no. 113); *APRI* 1, no. 213 (JL, 9119); *APRI* 3, no. 55 (JL, 8516); PUE2, no. 52; PUP, no. 44, 46.

[4] In one letter the cardinal legates were not actually termed *legati*, but merely as 'delegated from our side' (*PL*, Eugene III, no. 93 [*Bambergensia*, no. 35; JL, 8882]); similarly, the papal legates to the Second Crusade were not actually called 'legates' by the pope, but described as being sent *a latere* and commended 'just as *missi* from the bosom of your mother, the Roman Church' (*PL*, Eugene III, no. 204). In May 1152 Eugene

cardinal legate described as a papal *missus*.[1] Similarly, papal legates being described as papal *vicarii* in the letters was rare.[2] In sum, therefore, the explicit business of 'legates' and 'legations' would not appear to have been a major concern in the everyday business of the curia as it operated through its central writing offices. At the same time, the activities of all legates outside of the Patrimony, as they have affected the existing papal record, including the cardinals' own letters, concerned primarily the deciding of causes or else, to a lesser extent, their political and diplomatic functions.

This notwithstanding, as noted, a surprisingly high percentage of cardinals active in the period 1143-53 can be inferred from the papal letters—whether or not they were actually described as 'legates,' which was far less often the case—as having served in some capacity in the provinces as a papal legate. It is also clear that cardinal-priests continued to be frequently entrusted with important legatine duties and judicial powers. In fact, only five different cardinal-bishops, and nearly the same number of cardinal-deacons, appeared as legates in the letters for the entire decade. In fact, a chart of the instances of specific non-archbishops being referred explicitly or merely alluded to as legates outside of the papal Patrimony in the papal letters of 1143-53 tallies twenty-six identifiable cardinals active in the same period, including one cardinal acting as rector of Benevento and another found around Città di Castello, near the papal Patrimony.[3] In addition, the legation of Guido(6) occurred under Innocent II; while that of Guido(3) was perhaps concluded before the pontificate of Celestine II. Discounting even these four, the total number then of cardinals referred to in the papal letters of the period 1143-53 as legates sometime during the same period was at least twenty-two. The well known legation of John(3) Paparo to Ireland is known only from the narrative sources,[4] and brings the total to twenty-three: nearly thirty-five percent of all known cardinals active in this period, or somewhere slightly exceeding the percentage noted above by B. Zenker for the total number of cardinals active in the period 1130-59.

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did write concerning unnamed *legati a latere* to be sent to Frederick I in a letter acknowledging that king's recent election (*PL*, Eugene III, no. 504); but in February 1153, when Eugene wrote concerning the named cardinals to be sent, they were not termed *legati*, but only 'delegated from our side' (*PL*, Eugene III, no. 568).

[1] *IP* 7/1, 236/14.

[2] *IP* 1, 80/6 (5/24/47); *IP* 4, 71/28 (11/27/47); *IP* 1, 51/6 (8/30/48); Nachträge zu den römischen Berichten, no. 8 (*IP* 1, 141/31) (7/13/51); PU in Campanien, no. 10 (*IP* 2, 147/4) (7/23/51); see also, *IP* 2, *147/2 (Anno 1145-51). See also, on this cardinal, *PL*, Lucius II, no. 40; *IP* 3, 4/14; *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14). In another singular example a cardinal legate to Poland, Cardinal-deacon Guido(4) de Crema, was described as carrying the papal *vicis* in his legation, 'just as a vicar of the apostolic see.' *PL*, Eugene III, no. 319.

[3] Similarly, and not included in the table, the cardinal-bishop Conrad, future Pope Anastasius IV, appeared in one letter as a papal delegate at Todi, which was on the border of the Patrimony (*IP* 3, 4/14 [2/10/51]), and in at least five different letters between May 1147 and July 1151 as papal 'vicar' of Eugene III at Rome during the pope's exiles from the City: *IP* 1, 80/6 (5/24/47); *IP* 4, 71/28 (11/27/47); *IP* 1, 51/6 (8/30/48); Nachträge zu den römischen Berichten, no. 8 (*IP* 1, 141/31) (7/13/51); PU in Campanien, no. 10 (*IP* 2, 147/4) (7/23/51); see also, *IP* 2, *147/2 (Anno 1145-51).

[4] See, *HP*, 70-72.

In summation, the picture which emerges from the papal information available for the activity of the members of the cardinalate in the decade 1143-53, regardless of whether that activity was conducted in the capacity of a legate, is one of a college of cardinals whose participation in the business or government of the papacy was already by the 1140s highly inclusive, though some members figured far more regularly in the record than others. At the same time, despite the disproportion of evidence available for certain cardinals, it is difficult to divine the existence of some coterie of 'policy'-makers within the college, especially one linked by political, ideological, or ecclesiastical affinities. For instance, while it is the opinion here that a territorial and diplomatic 'policy' oriented away from the German king was already becoming preferred amongst the popes in this period, one can yet perceive the active participation of those cardinals who would at length become associated with both papal candidates of 1159.[1] Broadly, the papal record itself seems to indicate that these factions, though in fact quite possibly beginning to take shape, were not yet decisive in affecting papal history, or at least the conduct of the curia's business. Similarly, for the participation of the canons regular or other spiritual-minded members of the college active in this period, there was scarcely any discernable connection with the principles of a 'new reform' espoused by the so-called white monks. While the principle of the cardinals' activity in the business of the papacy, at least by 1153, appears to have been one of inclusiveness, the nature of that activity, like papal activity generally, was predominantly not spiritual or pastoral, but judicial and temporal.

2.2 THE EPISCOPATE

From the papacy's vantage point over the Church, as demonstrated in the papal letters of 1143-53, the episcopate, like the cardinalate, was an integral coadjutor in the administration of most papal business. In practice, the process of papal centralisation in this period was basically circuitous: more and more causes were being brought to 'Rome' integrating the pope and curia into the everyday business of even the most minor churches, only to be delegated back to the ordinary or regional prelate for decision or execution. Most of the extant papal letters of the period in fact

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[1] For instance, for those cardinals ultimately associated with the pro-Sicilian party around Adrian IV, the future Alexander III, and the future chamberlain Boso, Cardinal Hubald appeared in at least twenty-two papal letters of the period 1143-53; Julius appeared in at least nine; Bernard appeared in seven; Roland himself, appeared in five; Gregory(3) appeared in four; John(2) and Hubald(2) both appeared in three letters; Ildebrand, Odo, and Bishop Nicholas (future Pope Adrian IV) each appeared in two; and Odo(2) appeared in a single letter. Conversely, for those cardinals who would ultimately become associated with the pro-German faction, Cardinal-bishop Imar appeared in at least seventeen different papal letters of the period 1143-53; Guido(4) de Crema (Antipope Paschal III) appeared in ten; and Octavian himself (Antipope Victor IV) appeared in six. John(5), however, has not been identified in any of the letters of this period; while the Cardinal-bishop Theodwin was perhaps under-represented for his office appearing in only four letters of the period.

were addressed to members of the episcopate. Still, Bernard of Clairvaux, in the *De consideratione*, steadily exhorted Eugene III to save time 'for consideration' by refusing to deal with most of the growing flow of business arriving at the curia and assigning it to others. In fact, in this, Bernard seems to have betrayed a certain ignorance or even simpleness over the basic necessity of current administrative practice at the curia.[1] Without legates or other papal officers, enforcement in the provinces of the papal will, of its growing number of mandates and judgements, required the close cooperation of the prelacy. Furthermore, because of the growing amount of causes reaching the curia, the pope was already delegating business outright on a massive scale. Full judicial delegation itself—that is, delegation of actual litigation—was clearly a common and even regular practice in this period: at least 142 separate papal letters of this period demonstrated or inferred the papal use or employment of provincial judges delegate—close to thirty percent of the total number of letters of the same decade concerning clerical controversies. And with relatively rare exceptions these judges in this period still came exclusively from the ranks of the episcopate.[2]

Despite this apparent fact, Eugene III was accused by Bernard of Clairvaux, who went into detail on the subject in his *De consideratione*, of mutilating the established pyramidal hierarchy of the Church: metropolitans were being freed from primates; bishops freed from metropolitans;[3] but worst of all, abbots everywhere were being let loose of bishops' control and supervision, all to the great detriment of all clerical parties.[4] In these things, however, Bernard again was almost certainly misinformed. To begin with, in maintaining at least the semblance of a more extensive pyramidal hierarchy of the Church, the curia in the period around the mid-twelfth century

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[1] *De consideratione*, Bk. 1. XI. 14 (46), Bk. 3. II. 12 (93).

[2] In practice, an orientation towards a more thoroughgoing papal-episcopal partnership had begun decades earlier, at least as early as the pontificate of Calixtus II, a secular cleric who distinguished himself in the office of the powerful archbishopric of Vienne. In his pontificate, in the general restoration of order in the aftermath of the Investiture Conflict, a shift in papal relations and 'policy' between the episcopate and the monasteries has been seen to have begun, leading by degrees to a restoration of the trust and role of the episcopate in the papal government of the Church, a role threatened by Gregorian 'policies' under the exigencies of that conflict; see, I.S. Robinson, *Papacy*, 231-32; on Calixtus, in general, see most recently, M. Stroll, *Calixtus II, 1119-1124: A Pope Born to Rule* (Leiden, 2004). Conversely, it has been thought, such an orientation would be reversed yet again in the course of the thirteenth century in favour of a more thoroughgoing and direct form of papal centralism; see, R.W. Southern, *Western Society and the Church*, 201-02.

[3] The papal record is particularly silent with regard to exempt bishops, as only a handful of privileges of protection, especially for central and southern Italy, indicated any kind of practice of granting bishops specific or minor exemptions from the jurisdictions of metropolitans or primates: see, *PL*, Celestine II, no. 50 (bishop of Ferrara); *PL*, Lucius II, no. 2 (bishop of Ferrara), 46 (bishop of Rimini); *PL*, Eugene III, no. 411 (bishop of Monopoli), 464 (archbishop of Cologne); *IP* 10, 340/25 (bishop of Messina); PU in Salerno, La Cava und Neapel, no. 7 (*IP* 9, 501/4) (bishop of Rapolla); PUP, no. 43 (bishop of Coimbra). For the bishop of Ferrara, see also, PL, Innocent II, no. 131, col. 172-74, no. 396, col. 454-57.

[4] See, *De consideratione*, Bk. 3. IV. 14-18 (97-103), Bk. 4. VII. 23 (137). In a similar manner, the first recension of the *Decretum* of 'Gratian I' noted simply that 'the more elevated the grade, the greater the authority is found.' Gratian, *Decretum*, D. 21 d. p. c. 3; see, A. Winroth, Decretum, 199.

continued an older 'policy' of recognising the ecclesiastical dignities of metropolitan and primate.[1] Numerous documents of the period 1143-53, for instance, granted metropolitans the *pallium*;[2] while for every major kingdom of western Christendom, except for the German kingdom,[3] an extant papal document of the decade confirmed the primatial privilege of an archbishop: Lyons[4]

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[1] It has been generally recognised that the promotion of the authority of the jurisdiction of metropolitans over their suffragans was a means, along with the use of papal legates and monastic exemption, by which Gregory VII in the third quarter of the eleventh century sought to centralise and unify the Church under papal authority, reducing in the process the independence of episcopal authority and restoring a more 'ancient' structure of the Church; see, I.S. Robinson, *Reform*, 323-25; also, Gregory VII, *Das Register*, Bk. 2. II. 125-26, Bk. 2. LXXIII. 234, Bk. 7. XIVa. 482.

[2] In the period 1143-53, as in the case of Innocent II, grants of the *pallium* were spread out fairly evenly over the decade, with the only serious gap occurring in the years 1148 and 1149. In total, based almost solely on the papal documents contained in the *Patrologia latina*, Innocent II explicitly granted or confirmed the *pallium* in at least eleven letters or privileges between 1130 and 1141: *PL*, Innocent II, no. 12, col. 60-62 (Anno 1130) (Pavia); *PL*, Innocent II, no. 92, col. 130 (3/11/32) (Trier); *PL*, Innocent II, no. 106, col. 144-45 (6/29/32) (Aquileia); *PL*, Innocent II, no. 125, col. 167-68 (Anno 1131-32) (Magdeburg); *PL*, Innocent II, no. 132, col. 174-76 (3/19/33) (Genoa); *PL*, Innocent II, no. 236, col. 286-87 (6/12/36) (Grado); *PL*, Innocent II, no. 315, col. 361-63 (JL, 7890) (5/1/38) (Pisa); PUP, no. 30 (4/26/39) (Braga); *PL*, Innocent II, no. 411, col. 476-77 (5/24/39) (Salóna); *PL*, Innocent II, no. 420, col. 483-84 (10/20/39) (Bamberg); *PL*, Innocent II, no. 465, col. 534-35 (1/21/41) (Autun). In comparison, and using a greater variety of sources, at least fourteen papal letters between 1144 and 1153 explicitly granted or confirmed the use of the *pallium*, PUS1, no. 53 (JL, 8546) (3/25/44) (Tarragona); PUP, no. 41 (4/30/44) (Braga); *PL*, Lucius II, no. 36 (5/13/44) (Toledo); *PL*, Lucius II, no. 40 (5/15/44) (Dôl); PUS1, no. 54 (JL, 8928) (5/27/45) (Tarragona); *APRI* 3, no. 76 (*IP* 3, 325/29; *IP* 10, 383/42; JL, 8929) (5/29/46) (Pisa); *APRI* 3, no. 82 (*PL*, Eugene III, no. 141; JL, 8975) (12/31/46) (Bamberg); *Vita Eberhardi*, 99 (JL, 9042) (5/11/47) (Salzburg); PUE2, no. 66 (6/14/51) (York); *PL*, Eugene III, no. 465 (1/8/52) (Cologne); *APRI* 2, no. 400 (JL, 9564) (3/26/52) (Salzburg); *PL*, Eugene III, no. 570/71 (2/13/53) (Toledo); JL, 9701 (2/13/53) (Toledo). At least an additional nine, perhaps ten, papal privileges of protection also granted the *pallium*: *PL*, Lucius II, no. 15 (3/31/44) (Grado); *APRI* 3, no. 62 (*IP* 9, 393/34; JL, 8638; P-H *Iter*, 238) (1/2/45) (Brindisi); *PL*, Eugene III, no. 94 (3/15/46) (Bourges); PUKHL, no. 61 (JL, 8915) (5/4/46) (Abbot of Montis Thabor); *IP* 9, 293/10 (JL, 9421) (12/7/50) (Trani); JL, 9448 (2/19/51) (Autun); *PL*, Eugene III, no. 441 (4/1/51) (Acerenza); *PL*, Eugene III, no. 464 (1/8/52) (Cologne); *IP* 9, 321/13 (3/18/52) (Bari); also, *IP* 10, *23/19 (Anno 1143-53) (Reggio Calabria) (*laudatum* in privilege of 1165). See also, *IP* 10, *23/19 (Anno 1143-53), a privilege of protection for the archbishop of Reggio Calabria, *laudatum* in privilege of 1165, in which Alexander III confirmed for the archbishop the *pallium* as well as his right to consecrate his bishops, both Greek and Latin. See also, *IP* 9, *237/18 (JL, 9651) (Anno 1145-53), a privilege of protection for the archbishop of Siponto confirming a suffragan bishop. On the history of the *pallium*, see, *PL*, Urban II, no. 63, col. 344-46 (JL, 5464), no. 103, col. 378-79 (JL, 5509), no. 115, col. 388-89 (JL, 5522), no. 145, col. 421-22 (JL, 5569); Gratian, *Decretum*, D. 100 c. 1; Huguccio, *Summa* ad D. 63 c. 9, cited by R.L. Benson, *Bishop-Elect*, 184, who provided the Latin; R.L. Benson, *Bishop-Elect*, 169-87; I.S. Robinson, *Institutions*, 448-49; I.S. Robinson, *Reform*, 324-25.

[3] Cf., *PL*, Innocent II, no. 283, col. 331-33; *PL*, Eugene III, no. 464, 465; I.S. Robinson, *Institutions*, 445.

[4] Ältere PU in den päpstlichen Registern 3, no. 2; see also, Gregory VII, *Das Register*, Bk. 6. XXXIV-XXXV. 447-52; I.S. Robinson, *Institutions*, 445-46; I.S. Robinson, *Reform*, 323; H. Fuhrmann, 'Studien zur Geschichte mittelalterlicher Patriarchate' 2, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 40 (1954), 1-84, here at, 61-84; F. Villard, 'Primatie des Gaules et réforme grégorienne,' *Bibliothèque de l'École des Chartes* 149/2 (1991), 421-34; H.E.J. Cowdrey, *Pope Gregory VII, 1073-1085* (Oxford, 1998), 389-94, 602-04; H.E.J. Cowdrey, 'The Structure of the Church, 1024-1073,' *The New Cambridge Medieval History* 4/1, ed. D. Luscombe and J. Riley-Smith (Cambridge, 2004), 229-67, here at, 234-35. Otherwise, Lyons' primacy was not addressed or acknowledged in any further extant papal letters or privileges of the period 1143-53: the archbishop of Lyons, in fact, received no extant papal privileges of protection in the same period; he was addressed in only two papal letters of the same period (*PL*, Eugene III, no. 164, 500), and in only one letter or privilege of Innocent II—who made Archbishop Peter papal legate—from the *Patrologia latina* (*PL*, Innocent II, no. 68, col. 113); and he was mentioned in only four other letters of the period 1143-53 (*PL*, Eugene III, no. 221, 584; JL, 8999; *EPRI*, no. 192 [JL, 8833]). Otherwise, for the provinces of his primacy, both Lucius II and Eugene III would uphold Archbishop Hugh of

and Bourges[1] in France; Canterbury in England;[2] Pisa in Italy;[3] and Toledo in Spain.[4] In total, however, and to Bernard's credit, the curia did essentially nothing to further or even clarify supra-diocesan rights or jurisdictions. Especially with regard to primates, the curia's practice does not appear to have proceeded with any clear purpose, as it was satisfied merely to confirm and, in the case of Toledo, vaguely enforce privileges which originated under the early reform popes and were expanded in the first decades of the twelfth century.[5] Overall, the curia undertook no juridical definition of the various supra-diocesan jurisdictions—indeed, the natures of both dignities remained undefined both by popes throughout the twelfth century and 'Gratian,' who, like Innocent II, was especially ambivalent on the subject.[6] As a result, the papal letters and privileges of the period 1143-53 said virtually nothing—beyond a few isolated *arengae* averring vaguely, and

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Tours' metropolitan authority over Brittany (see, *PL*, Celestine II, no. 16; *PL*, Lucius II, no. 40, 41, 43; *PL*, Eugene III, no. 152, 353), while in April 1148 Archbishop Hugh of Rouen would renew a privilege of protection from Innocent II (*PL*, Innocent II, no. 54, col. 102-04) confirming and detailing his metropolitan rights over his suffragans and the province of Normandy (*APRI* 1, no. 221 [JL, 9234]).

[1] *PL*, Eugene III, no. 94. Interestingly, however, while the terms of the privilege only tersely and vaguely confirmed the 'primacy' over the provinces of Bourges and Bordeaux, the bulk were concerned with only the metropolitan rights *per se* which the archbishop possessed over the single province of Bourges itself. And significantly, only six weeks later, Eugene would renew a highly singular privilege of protection issued originally under Innocent II and renewed by Lucius II in March 1144 (JL, 8533) for the archbishop of Bordeaux and all of the suffragan bishops and abbots of his province, confirming and protecting all of their goods, customs, and liberties (*PL*, Eugene III, no. 107); see also, L. de Lacger, 'La primatie d'Aquitaine du VIIIe au XIVe siècle,' *Revue d'histoire de l'Église de France* 23 (1937), 29-50; I.S. Robinson, *Institutions*, 446.

[2] PUE2, no. 43; see also, Eadmer, *Historia* 6, 292; I.S. Robinson, *Institutions*, 446; D. Bethel, 'William of Corbeil and the Canterbury-York Dispute, *Journal of Ecclesiastical History* 19 (1968), 145-60; M. Brett, *English Church*, 12-70. The papal 'policy' was far from clear or consistent in this case, however, especially when compared to another papal document of this period issued on behalf of the church of York, demonstrating again the inherent confusion and conflict surrounding primatial claims: see, PUE2, no. 34, 42, 66.

[3] *APRI* 3, no. 76 (*IP* 3, 325/29; *IP* 10, 383/42; JL, 8929); see also, IP, v. 3, 325/26; *IP* 10, 383/40; *PL*, Urban II, no. 63, col. 344-46 (JL, 5464), no. 240, col. 507-09 (JL, 5707); *PL*, Innocent II, no. 315, col. 361-63 (JL, 7890); JL, 14,691; JL, 12,692, 12,693 (P-H *Iter*, 279); A. Felbinger, 'Die Primatialprivilegien für Italien von Gregor VII. bis Innocenz III. (Pisa, Grado und Salerno),' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 37 (1951), 95-163; I.S. Robinson, *Institutions*, 445. See also, for the patriarch of Grado, *PL*, Lucius II, no. 15; cf., also, for Italy, Arnulf of Milan, *Liber gestorum recentium*, ed. C. Zey (*MGH SS Rerum Germanicarum in usum scholarum separatim editi* 67: Hannover, 1994), 250.

[4] See below.

[5] Cf., for instance, for the continuity of the rhetoric, Gregory VII, *Das Register*, Bk. 6. XXXIV-XXXV. 447-52; *De consideratione*, Bk. 3. IV. 17-18 (101-03); *PL*, Eugene III, no. 588; see also, H.E.J. Cowdrey, *Structure*, 233-35 and n. 23. In most of *Das Register*, Bk. 6. XXXV. 450-52, Gregory VII was simply quoting Gregory I.

[6] See, *PL*, Innocent II, no. 106, col. 144-45, no. 136, col. 178-79, no. 142, col. 183-86, no. 198, col. 249-50, no. 323, col. 372 (JL, 7908), no. 465, col. 534-35; Gratian, *Decretum*, D. 18 (none of which was in the first recension), D. 21 d. a. c. 1, c. 1, d. p. c. 3, cc. 4, 5 (see also, cc. 6-8, not in the first recension of 'Gratian I'), D. 51 c. 5, D. 64 d. a. c. 1, cc. 1, 2, 4, 5 (see, D. 64 cc. 3, 6-8, added to the second recension of 'Gratian II'), C. 9 q. 3 (only d. a. c. 1, c. 1, d. p. c. 3, cc. 4-9, d. p. c. 21 were in the first recension), C. 10 q. 3 c. 6; see also, A. Winroth, Decretum, 198-99, 201-02, 211; I.S. Robinson, *Institutions*, 450; C.R. Cheney, *Becket*, 139-40.

rhetorically, the virtue of honouring the various grades of the ecclesiastical hierarchy[1]—of a concrete and practical nature about the nature of the authority of the ranks or dignities of metropolitan, patriarch, and primate.

In practice, in fact, any 'policy' establishing a true pyramidal hierarchy could never be thoroughly or consistently pursued, and the dignities of metropolitan and primate directly affected papal practice, by and large, only in their symbolic sense. In other words, the curia almost never enlisted archbishops in their metropolitan or primatial offices *per se*, nor did it do anything to define or enforce whatever specific rights these offices might have entailed, as it ultimately proved impractical, or even necessary, from the standpoint of papal business. Concomitantly, there were various jurisdictional exceptions to the hierarchical ordering which to some extent arose out of papal authority: such as in the case of cardinal legates with their papal *vices*, especially the cardinal-deacons and priests, and other provincial archbishop legates, as well as papal judges delegate; each of whom, as specially commissioned papal agents, might have constituted a potential problem to a pyramidal order of hierarchical jurisdictions.[2] For instance, in practice in the mid-twelfth century the papal record presents very few exceptions by which, in the context of the failure of a cardinal legate to act effectively, recourse to the metropolitan or primate could at times ease potential tensions, as when bishops contested against other bishops.[3] Otherwise, archbishops figured prominently in the period 1143-53 as judges delegate:[4] at least seventeen papal letters delegating causes to French archbishops concerned other bishops or archbishops,[5] compared with thirteen to Italian archbishops or patriarchs,[6] three to German[7] and Spanish,[8] and

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[1] See, Appendix 1, no. 39, 40, 41, 43, 76, 159, 181, 222, 225, 227, 229, 233, 234, 235, 236, 237, 238, 239, 243, 266, 267, 276; see also, Appendix 1, no. 197; see also, in the context of the letters, Appendix 1, no. 137, 155, 212, 215. On the vigorously asserted obligation of obedience in the *arengae*, see, Appendix 1, no. 4, 41, 60, 101, 168, 191, 204, 220, 221, 222, 224, 225, 226, 227, 228, 229, 230, 231, 235, 236, 237, 238, 239, 266, 276; see also, in the context of the letter, Appendix 1, no. 25.

[2] See, e.g., *HP*, 70-71; *PL*, Celestine II, no. 44; *De consideratione*, Bk. 4. V. 16 (129); cf., Gregory VII, *Das Register*, Bk. 2. LVa. 204 (c. 4); see also, I.S. Robinson, *Papacy*, 150, 171-78. On the jurisdiction of judges delegate, see below, ch. 5.1.

[3] See, e.g., *PL*, Celestine II, no. 44.

[4] Eight French archbishops, for instance, appeared in twenty-eight papal letters as judges delegate, compared to twenty-two bishops in sixty-one letters, and seven other judges in seventeen letters. For Italy, five archbishops appeared in twenty-seven letters; eleven bishops in twenty-one letters; and thirteen others in as many letters. For Germany, three archbishops appeared in eight letters as judges delegate; five bishops in six letters; and two others each in single letters. For England, there was one archbishop, of Canterbury, in eight letters, and five bishops in nine letters; and for Spain, two archbishops in four letters, and one bishop in a single letter. See, Appendix 4.

[5] *PL*, Lucius II, no. 79; *PL*, Eugene III, no. 350, 422, 423; JL, 8696; PUF2, no. 36 , 37, 41, 70; PUF5, no. 62, 69 (JL, 8823); Archives historiques du Poitou 3, 9, no. 6 (JL, 8528), 9, no. 7 (apparently not in JL), 20, no. 14 (JL, 9314), 20, no. 15 (JL, 9315); PUS1, no. 59, 61.

[6] *PL*, Eugene III, no. 541; *IP* 5, *60/202, *60/203, *236/10; *IP* 6/2, *13/26, *14/27; *IP* 7/1, 236/14; PU in Pisa, no. 4 (*IP* 5, 62/213); PU in Piemont, no. 4 (*IP* 6/2, 14/28); Le bolle pontificie, Montecassino, no. 20 (*IP* 8, 180/260) (9/1/51-52), 21 (*IP* 8, 181/261).

[7] *PL*, Eugene III, no. 403, 452, 453.

[8] *PL*, Celestine II, no. 44; PUS2, no. 67, 68.

two[1] to English archbishops. Yet, even in the case of archbishop judges delegate it was not clear that they were in fact delegated causes in specific instances because of their metropolitan dignity *per se*, as the duty of serving as a papal judge delegate was already by ca. 1145 routinely being imposed upon a wide array of bishops generally. All of this is not to say that the metropolitan and primatial dignities had as yet become meaningless, as they were certainly highly valued and jealously guarded by their holders. But they were almost certainly not eminently meaningful as far as the curia was concerned in the everyday administration of the churches; and certainly not nearly as meaningful as the mere office of bishop had become.

More importantly, when the pope did directly confront matters pertaining to the dignities of metropolitan and primate in this period, he did so more often than not in the role accorded him by his appellate office and as judge of the Church's highest tribunal. Indeed, it was in such a judicial context that any papal 'policy' regarding metropolitan and primatial jurisdiction or dignities most clearly left its imprint on the papal record of the period 1143-53. And yet, in this, papal practice again proved itself to be basically conservative, seeking in litigation to award and defend those claims which were most soundly supported by older and more ancient papal acts. Thus, beyond the myriad unresolved claims put forward at the Council of Reims in late March 1148 and four months later at the Council of Cremona,[2] the curia, in particular, was occupied for the length of the entire decade 1143-53, and well beyond, attempting to quell the various conflicts arising from the Toledan primacy of the Spanish church: specifically, the continued complaints of the archbishop of Toledo that the archbishops of Tarragona and Braga were denying him due 'reverence' as primate.[3] Over the course of that decade, as a result, the willingness of Lucius II and Eugene III to maintain the basically symbolic rights of a Spanish primate descended into an endless round of litigation, with one cause drifting into another, and as one primate died bequeathing to his successors his church's lawsuits, all creating a steady flow of appellants,

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[1] PUE3, no. 47, 49.

[2] See, *HP*, 4-6, 50 (*IP*, 6/1, *60/164, *60/165, *60/166; *IP* 6/2, *267/8); *PL*, Eugene III, no. 447. In all of these cases, according to John of Salisbury, the pope, under the pretext of due process, had apparently refused either to issue judgement or even formally hear the causes. No explanation is readily available for this hesitancy, other than the fact that the pope did not believe that a general council of the Church was a proper forum for the airing of such claims, in respect of the defendants' rights of due judicial process and the need for the substantiation of the pertinent documents of their own churches, even though John of Salisbury had personally believed that a *proclamatio synodalis* was equivalent to a *contestatio litis*: *Et quidem primo de proclamationibus ibi factis, eo quod auctoritate sanctorum constat synodali proclamatione, quasi litis contestatione, possessionis interruptionem civiliter fieri. HP*, 4; on this, see above, ch. 1.3.

[3] See, *PL*, Lucius II, no. 36, 37; *PL*, Eugene III, no. 22, 296, 370, 371, 447, 450, 537, 569, 570/71, 572, 588, 589; JL, 9242, 9701; *EPRI*, no. 187 (JL, 8547); *APRI* 2, no. 386 (JL, 8753); PUP, no. 30, 41, 47, 50, 51, 52; PUS1, no. 53 (JL, 8546), 54 (JL, 8928); see also, *PL*, Urban II, no. 5, col. 288-89 (JL, 5366); *PL*, Calixtus II, no. 79, col. 1168-69 (JL, 6823); JL, 5854; J.F. Rivera Recio, 'La primacía ecclesiástica de Toledo en el siglo XII,' *Anthologica annua* 10 (1962), 11-87; H. Fuhrmann, 'Studien zur Geschichte mittelalterlicher Patriarchate' 3, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*: *Kanonistische Abteilung* 41 (1955), 95-183, here at, 133-34; A. Becker, *Urban II*, 239 and n. 897; U.-R. Blumenthal, *Papal Registers*, 137-42; I.S. Robinson, *Institutions*, 446; I.S. Robinson, *Reform*, 323.

defendants, and papal letters to and from the curia. Yet, all was accomplished with apparently little lasting effect, as the opposition of the various Spanish archbishops to Toledo's claims continued well into the thirteenth century. Under Eugene III, what was perhaps most significant for the Toledo-Tarragona case was that the archbishop of Tarragona was also papal legate at the time, which circumstance almost certainly complicated the case, and underscored the inherent conflict of interests of such a 'policy' to recognise a more extensive pyramidal hierarchy.[1]

Nevertheless, in no case was it clear that the pope was interested in firmly wielding the brunt of his authority in bringing the recalcitrant metropolitans to heel. Rather, the pope persistently, if rather timidly, supported Toledo's appeals for recognition of his primatial status, while never threatening Tarragona with suspension—as he only reluctantly did in the case of the archbishop of Braga—but merely, in the end, threatening to interdict his use of the *pallium*, and never once suggesting that his papal legation was in jeopardy. At the same time, the metropolitan of Braga was pursuing a separate cause against Toledo over the metropolitan, though not primatial, jurisdiction of the diocese of Zamora, a distinction of jurisdictions which apparently the pope, though not Toledo, had maintained; and the pope ultimately judged in favour of Braga. In total, these did not necessarily appear to have been cases of the utmost urgency for the pope, as Eugene in particular perhaps thus allowed them to endure by failing to punish vigorously and promptly the various offenders—in a typically pragmatic fashion, the disruption of diocesan authority weighed more heavily upon the papal consideration than the continuance of resistance to the increasingly evident irrelevance of primatial authority. In the meantime, rather, the pope continued to accept the offenders' promises and to grant them their own metropolitan privileges. At the same time, however, the pope was not prepared to deprive outright any appellant of his justice, or any of the parties of their rights of due judicial process, and duly the complaints were answered, summonses were issued, and reissued, and threats and suspensions ultimately promised, if not lastingly enforced.

Several other controversies in this period which affected the papal court concerned metropolitan jurisdiction. To begin with, the curia supported the jurisdiction of the archbishop of Ravenna against the pretensions of the bishop and canons of Piacenza. This was the only case in this period in which the specific or practical rights of the superior—i.e., the rights of confirmation and consecration of the suffragan—were explicitly brought into question.[2] Yet, in this cause itself,

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[1] For Archbishop Bernard of Tarragona being referred to as 'legate of the apostolic see' in this period, see, *PL*, Eugene III, no. 447 (5/13/51); PUS2, no. 66 (7/6/52); PUS1, no. 61 (2/9/53); PUS1, no. 62 (2/9/53); PUS2, no. 67 (6/20/53); PUS2, no. 68 (6/20/53); *PL*, Eugene III, no. 589 (6/29/53).

[2] On this case, see, *PL*, Lucius II, no. 59; *PL*, Eugene III, no. 264, 322, 323, 324, 520; JL, 9357 (P-H *Iter*, 806); *IP* 5, *450/37, *450/38; *IP* 5, *60/201, *61/205, *61/207; *IP* 6/1, *60/164; Peter the Venerable, *Letters*, 440-42, no. 190 (*PL* 189, Bk. 6. XLIV, col. 462-64, esp. col. 462; *IP* 5, *511/8); see also, *PL*, Eugene III, no. 314; *APRI* 3, no. 94 (JL, 9478), 96 (JL, 9479), 95 (JL, 9480); Nachträge zu den PU in Italiens 5, no. 9 (*IP* 5, 464/20), 10 (*IP* 5, 477/26). Rome's relationship to Ravenna was unique: Ravenna had from the sixth century

the pope treated both parties in a coolly legal manner, involving due processes of legal procedure: both parties were summoned for arguments, including instructions to bear with them the pertinent muniments of their churches; while in proceedings the pope referred only to Ravenna's legal metropolitan rights as stipulated in a series of twelfth-century privileges. In practice, the curia was merely affirming what would become in the second half of the century the standard decretistic theory of ecclesiastical election, whereby the new prelate-elect was confirmed by his immediate superior.[1] On the other hand, the pope had initially demonstrated himself fully prepared to circumvent this right, had not the archbishop himself remonstrated through the proper judicial channels.

A more complicated case was terminated between the bishop of Dôl and the archbishop of Tours, again on the basis of both eleventh and twelfth-century privileges. Originally, the archbishop of Tours had claimed that his metropolitan rights over Brittany ought to be restored and affirmed, while the bishop of Dôl claimed that the same ought to be restored to him just as his predecessors had anciently possessed. The case had early antecedents dating back to 1076,[2] and at length was tried under Lucius II, who decided in favour of Tours by essentially confirming a sentence Urban II, namely, that all of the remaining bishops of Brittany should be subject to Tours as to their proper metropolitan.[3] Lastly, the cause of the Welsh see of St. David's (Menevia) against Canterbury had its origin in this period. The bishop of St. David's had apparently petitioned Lucius II in May 1144 for independence from the jurisdiction of Canterbury. Lucius II apparently put off the matter indefinitely, pending further intelligence;[4] while at length Canterbury

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been the chief see of the Byzantine Exarchate, which included the Roman Duchy, and from the ninth century the papacy had demanded that new archbishops of Ravenna receive the *pallium* personally from the pope and take an oath of conformity with the Roman Church in faith and morals; see, I.S. Robinson, *Reform*, 324; for the early relationship between Ravenna and Rome, see, T.F.X. Noble, *The Republic of St. Peter: The Birth of the Papal State* (Philadelphia, 1984).

[1] See, R.L. Benson, *Bishop-Elect*, esp. 56-115, 150-200, 373-85, esp. 379 and n. 10.

[2] See, Gregory VII, *Das Register*, Bk. 4. V. 302, Bk. 7. XV. 488-89; *PL*, Urban II, no. 113, col. 385-87 (JL, 5519), no. 114, col. 387-88 (JL, 5520); *PL*, Innocent II, no. 550, col. 618-19; *PL*, Celestine II, no. 16; *PL*, Eugene III, no. 152; I.S. Robinson, *Reform*, 323; I.S. Robinson, *Institutions*, 446; H.E.J. Cowdrey, *Gregory VII*, 395-97.

[3] As a compromise, Lucius II allowed the current bishop of Dôl, Geoffrey, the right to wear the *pallium* and to be subjected to none but the Roman see, only for the duration of his own lifetime. Separate letters were issued to the count of Brittany and all of the bishops and barons in the dioceses of Saint-Brieuc, Treguier, and Dôl to enforce the decision and Tours' rights. At the same time a privilege of protection was issued for the archbishop and church of Tours. Later, at the beginning of 1147 Eugene III would confirm the decision; and between 1148 and 1149 Eugene would at least twice confirm sentences of excommunication passed by the archbishop of Tours against Dôl and Saint-Brieuc on account of their 'disobedience and contumacy.' For the remainder of the period here under discussion, the cause fell silent: *PL*, Lucius II, no. 40, 41, 43; *PL*, Eugene III, no. 152, 353 (JL, 9343, for the date); PUF5, no. 57 (*PL*, Lucius II, no. 32/42; JL, 8599/8611). Ultimately Dôl would continue to press it cause, obtaining at length several privileges from Adrian IV. In turn, Alexander III would re-confirm Tours' right of consecration, and Innocent III would definitively deny Dôl the *pallium*, confirming the decisions of Lucius II and Eugene III, and subjecting him henceforward to Tours' metropolitan authority; see, I.S. Robinson, *Institutions*, 447.

[4] *PL*, Lucius II, no. 39.

counter-charged that the bishop of St. David's was being 'disobedient and rebellious' towards him and was withholding his due metropolitan rights. And in June 1147, after a trial including the examination of witnesses but apparently no documentary evidence, Eugene III judged with the advice of his cardinals in favour of Canterbury, ordering St. David's to grant him his due rights as 'the first metropolitan.'[1]

In total, while the papal letters of the period 1143-53 did demonstrate a continuing 'policy' of confirming and in certain instances of enforcing supra-diocesan jurisdictions, it was not an active 'policy' *per se*, and, as in the case of St. David's or even Dôl, the pope was not prepared to establish precedents or novel dignities, content merely to confirm those which had the clear support of older and authentic papal privileges; while in the cases concerning the Toledan primacy, the pope was not readily prepared to interrupt the diocesan and even metropolitan administration of those insecure provinces in pursuance of what had increasingly become the purely nominal rights of the primate. Exceptional here were the unsettled statuses of the Irish and Scandinavian churches. In fact, these cases, known only from non-papal sources, represented the only real instances of original papal 'policy' or initiative in the period in the erection of new metropolises: four *pallia* sent to Ireland,[2] and one to Norway,[3] both in the early months of 1152. However, neither of these episodes left any lasting mark in the papal record of the period, perhaps as they concerned the activity of cardinal legates.[4] Otherwise, in no case, beyond Ravenna's specific right

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[1] *PL*, Eugene III, no. 201. Again, St. David's would continue to press its claim for independence, without success, throughout the remainder of the twelfth century; see, M. Richter, 'Professions of Obedience and the Metropolitan Claim of St. David,' *The National Library of Wales Journal* 15 (1967-68), 197-214; M. Richter, 'Canterbury's Primacy in Wales and the First Stage of Bishop Bernard's Opposition,' *Journal of Ecclesiastical History* 22 (1971), 177-89; M. Richter, *Giraldus Cambrensis: The Growth of the Welsh Nation* (Aberystwyth, 1976), 83-132; I.P. Shaw, 'Giraldus Cambrensis and the Primacy of Canterbury,' *Church Quarterly Review* 148 (1949), 82-101; C.R. Cheney, *Innocent III*, 134-41; I.S. Robinson, *Institutions*, 448. See also, the controversy between the archbishops of Reims and Bourges over the right to conduct a crown-wearing ceremony of the French king: *PL*, Eugene III, no. 94, 101; *EPRI*, no. 196 (JL, 8897); see also, on Reims' claims to primacy, *PL*, Urban II, no. 27, col. 309-11 (JL, 5415); see, I.S. Robinson, *Reform*, 323; I.S. Robinson, *Institutions*, 445; H. Fuhrmann, *Patriarchate* 3, 111-14; A. Becker, *Urban II*, 191-92, 211; H.E.J. Cowdrey, *Structure*, 233-34.

[2] See, *HP*, 70-72; Mansi 21, 767-70; M. Horn, *Studien*, 212-18. The metropolitan sees were established at Armagh, Cashel, Dublin, and Tuam.

[3] See, PU in Ligurien, no. 1 (*IP* 6/2, 382/1); A. Bergquist, *The Papal Legate*, 41-48; M. Horn, *Studien*, 218-220; see also, *PL*, Innocent II, no. 137, col. 180-81, no. 138, col. 181, no. 139, col. 181-82, no. 140, col. 182, no. 141, col. 182. The metropolitan see was established at Trondheim

[4] In a third anecdotal case, according to John of Salisbury, sometime probably in the second of half of 1150, Roger II of Sicily requested that the pope grant the *pallium* and assign suffragans to the archbishop-elect of Palermo, newly translated from the see of Capua and duly consecrated. The *pallium* was granted 'in accordance with former custom,' but no suffragans were assigned. Roger II subsequently deliberately misinterpreted Eugene's reasons for not granting suffragans—some sees he noted received the *pallium* without suffragans because they presided over the chief city of a people, 'and supported by the privileges of the Roman Church, they can create princes in their nation'—in having his own son crowned king, without papal permission. *HP*, 67-69. Nevertheless, the fact that at least three, perhaps four, other archbishops from southern Italy received *pallia* after the summer of 1150—as opposed to only one from before—suggests that Roger's apparent loosening of royal control on the southern church had some definite effect as far as the papacy was concerned, and had facilitated a reintegration of the episcopal hierarchy there into the hierarchy

to confirm the bishop of Piacenza, and Bourges' right to summon provincial councils,[1] did the pope ever order the subjects of metropolitans or primates to offer anything but a vague 'obedience' or 'reverence.'[2] And it must, in any case, be emphasised that controversies over metropolitan and primatial status were always initiated at the curia, or else a papal council, as an appeal or plaint. In this sense, the curia merely exercised the powers of its court as it did with any case brought before it, great or small. Perhaps the most clearly defined and significant aspect of the dignities of metropolitan and primate, as far as the curia was concerned, was that by which they bound their officeholders to a close and personal relationship with the papacy, as in the obtainment of the *pallium* and other confirmations of privileges.

In sum, while the curia in this period was not interested in upsetting the established ecclesiastical hierarchy as it existed in theory, in everyday practice any jurisdictional level between the bishop and pope assumed less and less significance. In this way, Bernard's protests were only indirectly accurate in that papal governance in this period depended upon, primarily, the episcopate as it existed at its basic level.[3] Indeed, under the popes between 1143 and 1153 the members of the episcopate were being consistently supported and affirmed in their authority; while that same great mass of petitioners and appellants now beginning to flood the curia meant that the pope was necessarily and most efficiently enlisting the bishops inside and outside of their own dioceses as a matter of daily routine in the execution of papal business. Ultimately, then, the curia recognised its dependence upon the fundamental structure of the episcopal administration both for the care of souls and the delegation and execution of its own business. Likewise, while most of the extant papal letters of the period 1143-53 were addressed to members of the episcopate, relatively few letters were in fact demonstrably admonitory towards or deprecating of them—most such letters that did occur were issued on behalf of some fellow-member of the episcopate.[4] Rather,

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of the Roman Church. In this way, the grants perhaps served the interests of papal centralisation positively. Only after the Treaty of Benevento in 1156 were the sees of Girgenti, Mazzara, and Malta placed under Palermo as suffragans. Romuald of Salerno, *Chronicon*, 241; *HP*, 67 n. 2.

[1] In March 1146 a brief letter was issued to the suffragan bishops of Bourges, in the context of the archbishop's controversy with the archbishop of Reims, ordering them to obey the archbishop of Bourges, 'just as your proper metropolitan, and convene at his summons for the purpose of celebrating councils twice in the year in accordance with the statutes of the canons.' *EPRI*, no. 196 (JL, 8897).

[2] On the waning importance of the dignities of metropolitan and primate from the late twelfth century, see, R.L. Benson, *Bishop-Elect*, esp. 56-115, 150-200, 373-85; I.S. Robinson, *Institutions*, 448-51; I.S. Robinson, *Papacy*, 160; R. Brentano, *York Metropolitan Jurisdiction and Papal Judges Delegate (1279-1296)* (University of California Publications in History 58: Berkeley, 1959), 1-3, 179, here at, 3. Ultimately, legislation of Celestine III would affirm the principle of the requirement of metropolitans for the consent of their suffragans in their business, or, in the case of judicial causes, their actual presence, and this entered the corpus of canon law in the *Decretales* of Gregory IX (1234). *Decretales*, Gregory IX, Bk. 5. XXXI. 8.

[3] Cf., H.E.J. Cowdrey, *Structure*, 235.

[4] For Celestine II and Lucius II, see, e.g., *PL*, Celestine II, no. 16; *PL*, Lucius II, no. 86; *IP* 6/1, *252/3; PUF6, no. 54; PUP, no. 44. For Eugene III through 1146, see, e.g., *PL*, Eugene III, no. 60, 64, 101; JL, 8920; *IP* 6/1, *253/5, *253/6, *253/7, *253/8, *254/10, *254/12; *APRI* 2, no. 386 (JL, 8753); *APRI* 3, no. 73

inasmuch as all clergy were profoundly competitive, the papal letters, and especially the privileges, conveyed a general atmosphere of cooperation and accord as well as a basic culture of patronage between the curia, episcopate, and religious. Indeed, the privileges of protection of this period for religious houses chiefly confirmed or protected possessions having been donated by bishops, former and present,[1] while broadly the letters have left an impression of a global administrative network and hierarchy working relatively smoothly insofar as personal or immediate conflicts of interest did not intervene. And though, to be sure, conflicts were inevitable and commonplace, controversies over broad principles of diocesan jurisdiction and religious exemption were extremely rare. In other words, there were no great theoretical or ideological debates; nor was there any broad divide between the episcopate and religious *per se*, or between secular and regular clergy: clerical competition cut across ecclesiastical lines, as all houses guarded their own interests—the religious, in fact, were particularly quarrelsome amongst themselves.

But, again, the number of causes arriving at Rome which clerical competition did create, coupled with the decentralised nature of papal administrative procedures, determined that the popes in this period were daily integrating an empowered episcopate into the curia's own business and government. The circuity of this relationship has not been sufficiently stressed: in practice, curial business was mostly the business of the local churches originating in the provinces and subsequently brought to Rome, the self-described 'haven of repose,'[2] only to be subsequently

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(JL, 8898), 80 (*IP* 6/1, 254/13; JL, 8960); PUS2, no. 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934); PUF5, no. 67; PUF2, no. 41. For Eugene 1147-8 July 1148, see, e.g., *PL*, Eugene III, no. 168, 229, 243; *IP* 6/2, *192/6; PUF2, no. 58; PUS2, no. 60 (JL, 9258); PUP, no. 46. And for Eugene after 8 July 1148 including undated letters, see, e.g., *PL*, Eugene III, no. 367, 370, 371, 376, 378, 392, 412, 413, 414, 447, 450, 452, 453, 488, 497, 514, 517, 518, 519, 523 (Otto of Freising, *Gesta*, 120-22; JL, 9605), 557, 569, 588, 589; *IP* 6/2, *14/30, 161/1; *IP* 8, 180/261; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 66 (*IP* 5, 236/11); PUE2, no. 73 (JL, 9503); Nachträge zu den PU in Italiens 4, no. 8 (*IP* 5, 196/4); Le bolle pontificie, Montecassino, no. 20 (*IP* 8, 180/260), 21 (*IP* 8, 181/261); PUE1, no. 54; PUF2, no. 70; PUF9, no. 45 (*PL*, Eugene III, no. 555; JL, 9678); PUS1, no. 59; PUF7, Nach. Gott., no. 36; Urkunden zur Geschichte von Farfa, 177-78, no. 1 (*IP* 2, 68/52).

[1] For instance, at least sixty-four extant privileges of this period specifically stipulated that they were being granted by petition, or with the pope 'inclined (*inclinatus*) to the prayers' or 'wishes (*preces*),' of some member of the episcopate. See, for Celestine II and Lucius II: *PL*, Celestine II, no. 8, 47; *PL*, Lucius II, no. 17, 20, 53, 65, 66, 74; JL, 8444, 8504; 8591, 8601, 8601a, 8608, 8694; PUP, no. 42; PUF6, Nach. Gott., no. 14 (JL, 8694); Ältere PU in den päpstlichen Registern 3, no. 3 (*IP* 3, 100/1). For Eugene III through 1146: *PL*, Eugene III, no. 8, 17, 30, 68, 73, 74, 88, 109 (P. Classen, *Gerhoh von Reichersberg: Eine Biograghie mit einem Anhang über die Quellen, ihre handschriftliche Überlieferung und ihre Chronologie* [Wiesbaden, 1960], 345, no. 40; JL, 8914), 129 (*APRI* 3, no. 78; JL, 8949), 131; JL, 8716, 8723, 8731, 8742, 8843, 8868, 8881, 8884; PUE1, no. 35; PUE2, no. 48; PUE3, no. 52; PUF2, no. 28 (JL, 8716), 29 (*PL*, Eugene III, no. 375; JL, 9368), 40 (JL, 8868); PUF5, no. 68 (*PL*, Eugene III, no. 106; JL, 8909); PUF6, no. 55 (JL, 8723); PUS2, no. 53; PUF1, Nach. Gott., no. 29 (JL, 8742); PUF2, Nach. Gott., no. 13 (JL, 8881); PUF7, Nach. Gott., no. 31 (JL, 8843); Ältere PU in den päpstlichen Registern 2, no. 3. For Eugene III 1147-8 July 1148: *PL*, Eugene III, no. 268; PUE1, no. 39; PUF6, no. 60 (JL, 9099); PUF7, no. 64; PUN, no. 67; PUP, no. 48; PUF7, Nach. Gott., no. 34. For Eugene III after 8 July 1148, including undated privileges: *PL*, Eugene III, no. 345, 377, 511; JL, 9425, 9446; PUE2, no. 77; PUF6, no. 64 (JL, 9446); PUF3, Nach. Gott., no. 5.

[2] *PL*, Eugene III, no. 101; see also, *PL*, Eugene III, no. 458 (where an appellant was described as 'coming at length to the ultimate refuge'), 494 ('the refuge of appeal').

delegated back whence it came, mostly to the ordinary bishops. On one hand, the effect was to create a veneer of papal authority which effectively lacked, outside of the Patrimony, all real powers of governmental coercion. The pope's sword was invisible, and wielded at a great distance from most of the churches; and its threat was heeded only if the supreme nature of its anathema was chosen to be trusted. Yet, even in this, execution and enforcement of papal mandates or threats were invariably left to the diocesan and sometimes metropolitan administration. At the same time, many of the greater ecclesiastics of the western Church had their own interests at the curia, whether in the matter of personal connections or, in most cases, their own papal privileges or pending business.

On the other hand, the papal administration did offer distinct practical benefits: it could cut across all other lines of jurisdiction when necessary, and marshal and commission multiple ecclesiastical and secular powers simultaneously in a single cause to execute its justice. And to be sure, at certain times the curia did cut through the channels of the hierarchy, bypassing the ordinary bishop; at other times, it did both. Papal procedure on the whole was not rigidly structured. The pursuit was for 'justice.' But as broad rule the curia attempted to administer justice for all through the most basic system of ecclesiastical administration, the episcopate, either by delegating to its members or merely confirming and authenticating their own actions *ex officio*. In other words, papal administration in this period was too centralised, especially with regard to the appellate system and papal mandate, to include as a matter of routine primates or even metropolitans as such, but still far too decentralised not to include the episcopate, as it would in the course of the thirteenth century. What resulted was a rather astonishing level and breadth of integration achieved by the curia in the mid-twelfth century as evidenced, most pointedly, by the dispersed geographical nature of papally delegated provincial judges in this still early period of delegation, consisting primarily in episcopal sees which swept over most of western Europe, although concentrating in France and Italy.[1] The papal letters concerning these specific types of delegated *causae* represented between one-seventh and one-eighth of the total extant letters of this period. This, broadly, epitomised papal ecclesiastical 'policy' or practice in the mid-twelfth century: the administration of the curia's systems of justice and the integration, utilisation, and protection of the members of the episcopate.

2.3 THE RELIGIOUS

According to Bernard of Clairvaux, the pope's pernicious *libertas*—that is, monastic exemption from episcopal jurisdiction—was one of the most insidious ills which afflicted the Church of his

[1] See, Appendix 4.

time. Even though the pope, Bernard fully admitted, had the authority to grant monastic exemptions, the problem was that the pope was using this power arbitrarily and uselessly—as if to prove his great authority.[1] Bernard was also careful to point out that, as a result, not only were monks everywhere left undisciplined, but just as importantly their possessions were left exposed and vulnerable to predation.[2] In this, again, Bernard was almost certainly misinformed, as there was a distinct paucity in the number of all spiritual exemptions or immunities, let alone full exemption, granted in the extant original privileges of protection issued by Celestine II, Lucius II, and Eugene III.[3] For that matter, there was a relative dearth of immunities or exemptions even in the patent renewals of privileges.[4] At the same time, *salva* or 'saving' clauses, saving typically the

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[1] *De consideratione*, Bk. 4. VII. 23 (137).

[2] *De consideratione*, Bk. 3. IV. 14-18 (97-103).

[3] See, for the seemingly original privileges of protection issued under Celestine II, Lucius II, or Eugene III with significant exemptions or immunities, disregarding tithe immunity: *PL*, Celestine II, no. 1, 12, 13, 21, 33, 38; *PL*, Lucius II, no. 12, 30, 65; *PL*, Eugene III, no. 17, 51, 57, 73, 136, 137, 138 (*APRI* 3, no. 81; JL, 8971), 156, 176-77, 211, 223, 273, 328, 521, 578; *APRI* 3, no. 47 (JL, 8459), 51 (JL, 8498); PUE3, no. 55; PUF1, Nach. Gott., no. 23 (JL, 8511), 25 (JL, 8527); PUF6, Nach. Gott., no. 14 (JL, 8694), 17; PUF7, Nach. Gott., no. 33 (JL, 8994); PUP, no. 42; PU in Pisa, no. 3 (JL, 8854). On monastic exemption in the papal privileges of protection form the late eleventh century, see, Ecumenical Councils 1, 87-103, Council of Chalcedon, cc. 4 (here at, 89), 8 (here at, 91), 17 (here at, 95), 22 (here at, 97); Ecumenical Councils 1, 190-94 (Mansi 21, 281-86; JL 1, 809-10), First Lateran Council, cc. 2 (here at, 190), 4 (here at, 190), 16 (here at, 193), 18 (here at, 194), 19 (here at, 194); Ecumenical Councils 1, 197-203 (Mansi 21, 525-33; JL 1, 885-86), Second Lateran Council, c. 3 (here at, 197); *PL*, Calixtus II, no. 176, col. 1242-43 (JL, 6964); *Chronica monasterii Casinensis*, ed. H. Hoffmann, *MGH SS* 34 (Hannover, 1980), 542-43; Gratian, *Decretum*, C. 25; *Decretales*, Gregory IX, Bk. 5. XXXIII. 3 (Ecumenical Councils 1, 211-25 [Mansi 22, 212-33; JL 2, 340-41], Third Lateran Council, c. 9 [here at, 215-17]), Bk. 5. XXXIII. 8 (JL, 14,037); *Collectio Lipsiensis*, XXXIV. 4 (JL, 14,237); Gerhoh of Reichersberg, *De investigatione Antichristi*, 391-93; Gerhoh of Reichersberg, *Liber de corrupto Ecclesiae statu ad Eugenium III papam*, *PL* 194, col. 9-120; Gerhoh of Reichersberg, *Epistolae*, no. 1, col. 489-90, no. 3, col. 490-92, no. 17, col. 564-570, esp. col. 567, no. 18, col. 570-73, no. 21, col. 575-85, no. 23, col. 586-604; *PL*, Eugene III, no. 111 (P. Classen, *Gerhoh von Reichersberg*, 346, no. 41; JL, 8922). On Gerhoh and the papacy in general in this period, see, *PL*, Celestine II, no. 31 (P. Classen, *Gerhoh von Reichersberg*, 341-42, no. 31; JL, 8484); *PL*, Lucius II, no. 85 (P. Classen, *Gerhoh von Reichersberg*, 342, no. 33; JL, 8577); *PL*, Eugene III, no. 109 (P. Classen, *Gerhoh von Reichersberg*, 345, no. 40; JL, 8914); JL, 8576 (P. Classen, *Gerhoh von Reichersberg*, 342, no. 32); P. Classen, *Gerhoh von Reichersberg*, 107-49, 315, 321, and 345, no. 39, 353-54, no. 57, 356, no. 63, 419, no. 11. For the secondary literature, see, D. Knowles, 'The Growth of Monastic Exemption,' *Downside Review* 50 (1932), 201-31, 396-436; D. Knowles, *The Monastic Order in England: A History of its Development from the Times of St. Dunstan to the Fourth Lateran Council, 940-1216* (Cambridge, 1963), 575-91; K. Pennington, *Papal Monarchy*, 154-77; S. Chodorow, *Gratian*, 141-48; I.S. Robinson, *Papacy*, 186, 211, 233-35; I.S. Robinson, *Institutions*, 392; and for the older literature, see, G. Schreiber, *Kurie und Kloster im 12. Jahrhundert* (Stuttgart, 1910), esp. v. 1, 47-55. On Calixtus II, see most recently, M. Stroll, *Calixtus II*, esp. 401-40.

[4] See, for renewals of privileges of protection issued originally before Celestine II, Lucius II, and Eugene III with significant exemptions or immunities, disregarding tithe immunity: *PL*, Celestine II, no. 5, 30; *PL*, Lucius II, no. 3, 9, 44, 49, 51, 54b., 67, 69; *PL*, Eugene III, no. 10, 12, 13, 14 (*Chronica S. Bertini*, 801; *PL*, Eugene III, no. 15-16; JL, 8740), 31, 32, 44, 67, 71, 80, 90, 120, 128, 132, 155, 171, 179, 198, 235, 290, 317, 384, 407, 409, 426, 489, 498, 582, 585; *APRI* 1, no. 202 (JL, 8873), 224 (*PL*, Eugene III, no. 455; JL, 9495); *APRI* 3, no. 53 (JL, 8510), 68 (JL, 8778), 87 (JL, 9280/9280a), 89 (JL, 9282), 103 (JL, 9488), 104 (JL, 9493), 108 (JL, 9572), 110 (JL, 9588), 113 (*PL*, Eugene III, no. 587; JL, 9731); PUF5, 57 (*PL*, Lucius II, no. 32/42; JL, 8599/8611); PUF7, no. 60 (JL, 9037); PUF1, Nach. Gott., no. 28 (JL, 8727); PUF4, Nach. Gott., no. 24 (JL, 9394); PUF5, Nach. Gott., no. 18 (JL, 8640); PUF6, Nach, Gott., 13 (JL, 8623), 18; PUTJ2, no. 7; PUKHL, no. 64 (*PL*, Eugene III, no. 300; *RRH*, no. 249; JL, 9260), no. 65 (JL, 9469); PUP, no. 42; Ältere PU in den päpstlichen Registern 3, no. 6 (*IP* 6/1, 317/4), 7 (PUP, no. 48); PU in Turin, no. 10; PU in westlichen Toscana, no. 5 (JL, 8973); PU in Mailand, no. 8 (*IP* 5, 405/12); Nachträge zu den

'canonical justice' or 'authority' of a house's diocesan bishop, were now appended nearly to all privileges issued in this period, including many of the old renewals stipulating exemptions.[1] Likewise, there is almost no trace in the papal record of the period of controversies over claims to or the interpretation and extension of privileges of exemption;[2] while conversely there is isolated evidence that as early as 1153 papal documents were used in litigation only with strict regard to the precise wording of specific immunity clauses.[3] In total, the question of religious exemption from diocesan jurisdiction in this period was basically a non-issue, despite whatever future controversies would arise. Similarly, the popes in this period also consistently enforced a canon of Urban II from the Council of Clermont[4]—which was cited by 'Gratian I' in his brief treatment of monastic churches[5]—stipulating that monastic churches remain subject to diocesan spiritual jurisdiction.[6] And despite Bernard's grievances over the vulnerability of the temporalities of the

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römischen Berichten, no. 7 (*IP* 6/1, 319/44); PU in Venedig, no. 3 (*IP* 3, 460/18).

[1] On the traditional interpretation of this clause, which requires revision, see, F. Thaner, 'Über Entstehung und Bedeutung der Formel "*salva sedis apostolicae auctoritate*" in den päpstlichen Privilegien,' *Sitzungsberichte der Wiener Akademie der Wissenschaft: Philologisch-historische Klasse* 71 (1872), 809-51; J.B. Sägmüller, 'Zur Entstehung und Bedeutung der Formel "*salva sedis apostolicae auctoritate*" in den päpstlichen Privilegien,' *Theologische Quartalschrift* 89 (1907), 93-117; S. Chodorow, *Gratian*, 152-53, 255-56; I.S. Robinson, *Papacy*, 206-07, 238.

[2] See, *PL*, Eugene III, no. 25.

[3] See, *PL*, Eugene III, no. 512, discussed at length below, ch. 7.2.

[4] Council of Clermont (1095), c. 4 (Gratian, *Decretum*, C. 16 q. 2 c. 6).

[5] Gratian, *Decretum*, C. 16 q. 2 cc. 6, 7, d. p. c. 7; see also, Gratian, *Decretum*, C. 16 q. 1 cc. 1-42, C. 16 q. 2 c. 1; *Decretales*, Gregory IX, Bk. 5. XXXIII. 3 (Ecumenical Councils 1, 211-25 [Mansi 22, 212-33; JL 2, 340-41], Third Lateran Council, c. 9 [here at, 215-17]); Rufinus, *Summa* ad C. 16 q. 2, cited by K. Pennington, *Papal Monarchy*, 163, who provided the Latin; Huguccio, *Summa* ad C. 16 q. 2, cited by K. Pennington, *Papal Monarchy*, 164-66, who provided the Latin; K. Penning ton, *Papal Monarchy*, 161-77; G. Constable, 'Monastic Possession of Churches and "*spiritualia*" in the Age of Reform,' *Religious Life and Thought (Eleventh-Twelfth Centuries)* (London, 1979), 304-31; G. Constable, *Monastic Tithes: From their Origins to the Twelfth Century* (Cambridge, 1964), 57-197.

[6] While only a single undated letter of Innocent II from the *Patrologia latina* cited Urban II's precedent in this regard (*PL*, Innocent II, no. 562, col. 627), at least thirteen papal letters in total of the period 1143-53 similarly explicitly stipulated the decree citing Urban II by name: *PL*, Lucius II, no. 94; *PL*, Eugene III, no. 25, 288, 443, 579, 580; PUF3, no. 65; PUE2, no. 34, 42; PUF1, no. 51 (JL, 9171); PUF2, no. 33; PUF8, no. 41 (*PL*, Eugene III, no. 547; JL, 9661); PU in Padova, no. 3 (*IP* 7/1, 315/6). It was also the explicit subject of at least three distinct *arenga* statements: Appendix 1, no. 105, 106, 107; see also, in the context of the letters, Appendix 1, no. 3, 122, 139, 233, 234. Furthermore, at least a further fifteen letters conveyed or contained the same or similar judgements or pronouncements; see, *PL*, Eugene III, no. 25, 175, 512, 533, 566; *IP* 6/1, *212/3; *EPRI*, no. 190 (JL, 8612); PUE2, no. 59; PUF1, no. 51 (JL, 9171); PUF2, no. 36, 37; PUF8, no. 34 (JL, 9323), 41 (*PL*, Eugene III, no. 547; JL, 9661); PUTJ1, no. 10; Cartulaire de l'église Notre-Dame de Paris 1, 27, no. 6 (JL, 9073) (see, 28-29, no. 8); see also, *PL*, Eugene III, no. 9, 412; *IP* 6/2, *378/17; PUF6, Nach. Gott., no. 11 (JL, 8542), 12 (JL, 8543). The decree was similarly specified in numerous privileges of protection; see, e.g., *PL*, Celestine II, no. 21, 30, 50; *PL*, Lucius II, no. 7, 16, 20, 44, 49, 65, 66; *PL*, Eugene III, no. 10, 40, 110, 136, 171, 173, 193b., 198, 402, 407, 495b., 510, 578, 581; *APRI* 1, no. 199 (JL, 8799), 202 (JL, 8873) III, 56 (JL, 8565), 68 (JL, 8778), 89 (JL, 9282), 108 (JL, 9572); PUE1, no. 33; PUE3, no. 75; PUF4, no. 45 (JL, 8874), 46 (JL, 8875), PUF5, no. 66 (JL, 8901); PUF6, no. 57 (JL, 8902); PUN, no. 58 (JL, 8848); PUF2, Nach. Gott., no. 16. Conversely, the right was almost never specifically stipulated without episcopal supervision; cf., e.g., *PL*, Eugene III, no. 223; see also, *PL*, Eugene III, no. 44, 176-77, 178, 328, 510, 591; *APRI* 3, no. 104 (JL, 9493), 111 (JL, 9622); PUP, no. 42; Ältere PU in den päpstlichen Registern 3, no. 7 (PUP, no. 48); PU in Venedig, 3 (*IP* 3, 460/18); PU in Mailand, no. 9 (*IP* 5, 405/12). Though traditionally uncanonical, monastic possession of churches was an established fact by the mid-twelfth century, and accepted as a matter of course by the papacy: a large number of letters of the

religious in his day, the curia's relations with the religious consisted primarily in the preservation of their persons and properties—in actual practice, this invariably entailed delegation to the diocesan bishop.

In general, while the curia in the period 1143-53 did consistently proclaim its special duty as universal patron of the religious[1]—three separate letters, for instance, addressed to abbeys, opened with a declaration of the special papal *regimen* of all abbeys[2]—such support, in practice, did not extend to any 'policy' which would exacerbate the state of religious exemption in the dioceses. In effect, the support of the curia for religious was little different from the support it provided all visitors to the curia: the support of its confirmation, protection, and tribunal, so long as the petition appeared 'just.' In the provinces themselves, as far as the curia was concerned, it remained the responsibility of the bishops to see to the basic maintenance, discipline, and well-being of their religious.[3] Thus, while especially in papal letters of confirmation or privileges of protection the bishops appeared as great benefactors of the religious,[4] occasions when the curia's practice of mutual episcopal and religious support ran into actual conflict, as far as papal business was concerned, were in fact surprisingly rare; and as a rule the curia supported episcopal claims over opportunistic houses. And to be sure, bishops and religious appeared commonly in the letters as opposing parties in causes; but these causes rarely involved questions of diocesan exemption or even jurisdiction *per se*. Accordingly, the curia in this period did not apparently consider the

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period 1143-53 merely confirmed 'churches' held by monastic houses, as did the privileges of protection generally. For the letters, cf., under Celestine II and Lucius II: *PL*, Celestine II, no. 29 (*RRH*, no. 222; JL, 8482), 42; *PL*, Lucius II, no. 28 (JL, 8593); JL, 8526, 8529, 8572a: *IP* 1, *51/4, *51/5; *IP* 5, 344/36, *239/5; *IP* 6/2, *36/2; *APRI* 2, no. 383 (JL, 8659) 384 (JL, 8660); *APRI* 3, no. 63 (*IP* 1, 27/17; P-H *Iter*, 238; JL, 8711); PUF8, no. 19 (JL, 8487); PUF1, Nach. Gott., no. 27 (JL, 8584); PUE2, no. 34, 41; PUF5, no. 61; PUF6, no. 53. Under Eugene III through 1146: *PL*, Eugene III, no. 81, 100, 131; JL, 8815, 8933; *APRI* 3, no. 82 (*PL*, Eugene III, no. 141; JL, 8975); PU in Mailand, no. 9 (*IP* 7/1, 339/38; P-H *Iter*, 239; JL, 8749; the same, nearly, as *Antiquitates* 5, 259-60, *PL*, Innocent II, no. 158, col. 208-09, both from Innocent II); PUF7, no. 57 (JL, 8912); PUF1, Nach. Gott., no. 30 (JL, 8819); Römische Analekten, 35-36, no. 3 (*IP* 1, 77/20); PUE2, no. 42, 55; PUF2, no. 42, 43 (JL, 8961); PUF1, no. 41 (JL, 8756); PUF6, Nach. Gott., no. 15. Under Eugene III 1147-8 July 1148: *PL*, Eugene III, no. 175; JL, 9131, 9217, 9221a; *IP* 6/1, 122/2 (*PL*, Eugene III, no. 306; JL, 9274/9276); *APRI* 1, no. 207 (JL, 8996), 211 (JL, 9074), 218 (JL, 9176); PUE1, no. 38; PUE2, no. 56; PUF5, no. 72; PUF1, no. 51 (JL, 9171). Under Eugene III after 8 July 1148, including undated letters: *PL*, Eugene III, no. 379, 511, 584; JL, 9367, 9372, 9381, 9384; *IP* 1, *51/8; *IP* 4, *128/2; *IP* 7/2, *108/4; *IP* 8, *326/25; *Antiquitates* 5, 1013 (*IP* 6/2, *391/1—a *charta* of Gotifredus, bishop of Luni); PUE2, no. 59, 60; PUF2, no. 65, 66 (JL, 9685), 69; PUF6, no. 63 (JL, 9358); PUS1, no. 60; PU in westlichen Toscana, no. 6 (*IP* 3, 432/100; JL, 9481); PU in den Abruzzen, no. 4 (*IP* 4, 294/4).

[1] For reference to the 'religious' within the *arengae* themselves, see, Appendix 1, no. 4, 23, 28, 30, 32, 33, 35, 46, 47, 48, 49, 50, 51, 63, 70, 71, 72, 73, 82, 84, 95, 98, 123, 156, 170, 172, 174, 176, 177, 178, 180, 184, 189, 206, 207, 247, 255, 259, 270, 284, 297; see also, in the context of the letters, Appendix 1, no. 11, 22, 23, 32, 37, 53, 85, 192, 203, 232, 242, 264, 289.

[2] *Quantum necessarium sit monasteriorum quieti prospicere et de eorum utilitate sollicite cogitare, anteactum officium, quod in abbatie regimine gessimus, nos instruit et informat.* Appendix 1, no. 57 (PUF2, Nach. Gott., no. 15), 69 (*PL*, Eugene III, no. 281), 70 (*PL*, Eugene III, no. 335).

[3] This was repeated in numerous *arenga* statements of the period; see, e.g., Appendix 1, no. 14, 31, 82, 83, 156, 170. For bishops referred to as 'religious,' see, Appendix 1, no. 165, 228.

[4] Numerous *arengae* announced the duty of the papacy to confirm those things 'done well' by the bishops for the sake of the religious; see, Appendix 1, no. 50, 51, 172, 174, 176, 177, 178, 180, 184.

interpretation of exemption in any papal privilege broadly, preferring, rather, to choose the narrowest possible interpretation, and always referring to a privilege's specific clauses and terms. For the curia, in sum, monastic exemption had become a nuisance. And such a 'policy' kept pace with the ideals of the various 'new orders,' including the canons regular, which equated exemption with iniquitous pride.

Indeed, religious influence in the cardinalate, at least with regard to the canons regular, was moderately strong in the period 1143-53, and the prevailing view of historians over most of the last century has chosen to see a vague but undeniable link between the ideology of the 'new' religious in the curia and in the provinces and curial 'policies' in the decades preceding the election of Adrian IV. According to this paradigm, the papal schism of 1130 was caused by a split within the curia and the Church at large into rival factions between an old and new-guard, represented by the 'old' and 'new' religious orders respectively. With few exceptions, the electors of Anacletus II were the 'older' cardinals, both literally and in terms of association with the older Benedictine monasticism. Innocent II conversely was supported by the younger cardinals purportedly connected with a 'new spirituality' associated with the canons regular and new monastic orders, especially the Cistercians, with their emphasis upon the apostolic life, the avoidance of temporal imbroglios, and deference towards episcopal jurisdiction in the governance of the religious. A change in curial leadership and personnel along these lines has been seen to have coincided with the Concordat of Worms, and thus the end of the Investiture Conflict, and consequently heralded the end of the reform papacy: the new cardinals rejected the old Gregorian strategy—alliance with the Normans over against the empire, along with an alliance with the monasteries against the episcopate—preferring instead an even older strategy whereby the Church ought to seek and embrace imperial protection and foster a cooperative relationship with the episcopate for the continued purpose of internal reform.[1] Related to this paradigm, the terms and constructs of an older, worldly 'Gregorianism' over against a new, spiritual 'Bernardinism' have emerged in the historiography. Yet, representative of the confusion inherent in this type of terminology, some scholars have even characterised Bernard of Clairvaux himself as the ultimate

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[1] On this, in general, see, H.-W. Klewitz, 'Das Ende des Reformpapsttums,' *Reformpapsttum und Kardinalkolleg* (Darmstadt, 1957), 207-59; H.-W. Klewitz, *Die Entstehung des Kardinalkollegiums*, 9-134; F.-J. Schmale, *Studien zum Schisma des Jahres 1130* (Cologne, 1961); S. Chodorow, *Gratian*; H. Bloch, 'The Schism of Anacletus II and the Glanfeuil Forgeries of Peter the Deacon of Monte Cassino,' *Traditio* 8 (1952), 159-264; M. Stroll, *The Jewish Pope: Ideology and Politics in the Papal Schism of 1130* (New York, 1987); M. Stroll, *Symbols as Power: The Papacy following the Investiture Contest* (Leiden, 1991); P.F. Palumbo, *Lo scisma del MCXXX: I precedenti, la vicenda romana e le ripercussioni europee della lotta tra Anacleto ed Innocenzo II* (Miscellanea della Deputazione romana di storia patria 13: Rome, 1942). For synthesis and bibliographical references on this, see, I.S. Robinson, *Papacy*, 47-51, 65-78, 214-217, 381-85; M. Stroll, *Jewish Pope*, esp. 1-9. M. Stroll, *Jewish Pope*, has most recently, and rather convincingly, provided a synthesis and point-by-point refutation of the entire paradigm; she even went so far as to argue that if such a dichotomy did exist with factional ramifications for the curia and schism of 1130, Anacletus rather than Innocent fit the role considerably better as champion of the 'new' ideals or elements.

'Gregorian.' In any event, all of these things have been said to have led to a 'crisis of cenobitism' between 1050 and 1150 resulting from the conflict of the simplicity, austerity, and obedience of the 'new' monks against Cluniac centralisation, temporalism, and excessive ornamentation and liturgical elaboration, culminating by the mid-twelfth century in the eclipse of the old Benedictine monasticism of the Black monks.[1]

In short, it is the contention here that the actual papal evidence of the period around the mid-twelfth century conclusively proves that each of these paradigms are distinctly inaccurate—if not entirely fruitless—at least insofar as they concern any lasting affects on papal 'policy' beyond the pontificate of Innocent II. With the exception of the curia's clear support of episcopal jurisdiction, especially with regard to the monasteries, little to no trace has been left of any pervasive 'Bernardinism' in the practice of the pope and curia in the period 1143-53, with no clear evidence that the curia preferred a pro-imperial or anti-Sicilian political 'policy;' while overall there was a definite lack of any 'spiritualism' or spiritual motives defining or actuating curial practice and business in this period. The contrary, in fact, was far more the case: the business of the curia around mid-century was decidedly occupied with worldly or temporal matters; while the members of the cardinalate associated with the 'new orders' were deeply involved in the judicial and temporal business of the curia as its judges and political agents. Similarly, while Eugene III and his two immediate predecessors clearly supported the communities of White monks, they supported equally those communities of Black monks, and secular clerics for that matter: any practice of promoting one order of clergy against simply did not take place in this period. Occasionally, the papacy did lend its support to efforts to reform houses of secular clerics and lapsed monks, but it did so invariably merely in response to petitioning houses or bishops—that is, without any actual initiative on its own behalf.[2]

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[1] See, in particular, E. Kennan, *Traditio* 23; H.V. White, *Gregorian Ideal*, 321-48; H.V. White, 'Pontius of Cluny, the *Curia Romana* and the End of Gregorianism in Rome,' *Church History* 27 (1958), 195-219; N.F. Cantor, 'The Crisis of Western Monasticism, 1050-1130,' *American Historical Review* 66 (1960-61), 47-67; J. Van Engen, 'The "Crisis of Cenobitism" Reconsidered: Benedictine Monasticism in the Years 1050-1150,' *Speculum* 61 (1986), 269-304.

[2] The one true exception to this was the curia's extraordinary patronage of the Knights Templar; see, JL, 8821 (see, PUTJ1, no. 8), 9193, 9291a, 9383 (see, PUTJ1, no. 8), 9505a, 9569a; *APRI* 1, no. 201 (JL, 8829); *EPRI*, no. 201 (JL, 9164); PUTJ1, no. 8 (JL, 8478), 9 (see, PUTJ1, no. 8), 10, 11 (see, PUTJ1, no. 8), 13, 15, 17, 18; PUTJ2, no. 5; PU in Sizilien, no. 3 (see, PUTJ1, no. 8); PU in Malta, no. 2 (see, PUTJ1, no. 8); PUS2, no. 57, 62; Archives de l'Orient latin 2, 253, no. 1 (JL, 9165), 253-54, no. 2 (JL, 9166), 255, no. 4 (JL, 9241); PUF7, no. 70 (PUTJ1, no. 14; JL, 9438). In all, at least thirteen papal encyclicals were issued for the benefit of the order in the decade 1143-53: one prescribed for the order the free right to build chapels, with burial rights, as well as the right to maintain their own priests (PUTJ1, no. 10); another proscribed the right of any member to leave the order, imposing a sentence of excommunication upon all potential violators (PUTJ1, no. 15); and another granted tithe immunity to the entire order (PUTJ1, no. 17). More important in this period were the efforts of the curia to provide the order with cash subsidies. Thus, the same encyclical was sent out on at least ten different occasions ordering the prelates of the Church to exhort their people to make cash donations to the order. Those who would make an annual donation were promised an indulgence: JL, 8821 (see, PUTJ1, no. 8), 9291a, 9383 (see, PUTJ1, no. 8); *APRI* 1, no. 201 (JL, 8829); PUTJ1, no. 8 (JL, 8478); 9 (see, PUTJ1, no. 8), 11 (see, PUTJ1, no. 8), 18; PU in Sizilien, no. 3 (see, PUTJ1, no. 8); PU in

In general, as far as the papal letters of the period were concerned, the purely spiritual condition of the Church, including the religious, was seldom an active papal concern. This coincided with an active 'policy' to support the jurisdiction of bishops over the religious of their dioceses. The curia's relationship with the religious, as with all clergy, consisted primarily in the defence of their properties in the face of grievances or violations and the resolution of their lawsuits: even the hundreds of privileges of protection issued in this period concerned primarily the protection, confirmation, and provision of title-deeds for the properties, revenues, and holdings of the religious, as with other secular houses and even bishops alike. And in all cases, the relationship between the curia and the religious houses, as with all clerical houses, was predicated basically upon the papal petitionary system. In sum, beyond the 'policy' to maintain episcopal authority over the religious, those scholars who have perceived in the successive *curiae* of the victorious Innocentine papacy after the schism of 1130 a party based upon precepts for a 'new reform,' predicated upon the spirituality or austerity of the 'new orders' over against the corruption and decadence of the 'old' Benedictines, have had little regard for the actual papal record of this period.

2.4 'BENEDICTINISM'

The sources of the period 1143-53 reveal that, for the pope and curia, like the 'old' Benedictine Black monks, monastic success was not measured in an eremitical renunciation of the things of this world. The Benedictine Rule itself did not actually prescribe material poverty as such; and the Black monks accordingly never focused on material poverty as an end in itself, though they followed the Rule assiduously in instituting means of formal almsgiving. Rather, as J. Van Engen effectively emphasised, Benedictine literature maintained a consistent attitude towards material well-being as salubrious in itself, and concomitant with spiritual health.[1] The various monastic sources of the ninth century all placed an inordinate importance on the great wealth in land, holdings, rights, revenues, and movables—vessels, books, etc.—accrued by or recovered for a house or foundation for their own enlargement or enrichment, including building-projects. At the same time, the monastic lists of gifts and the stories of their transmission became thoroughly and inextricably interwoven with descriptions of sanctity and monastic discipline, and were by no means considered a sign hypocrisy or spiritual decadence. Rather, all were presented for the

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Malta, no. 2 (see, PUTJ1, no. 8); see also, JL, 9193; PUTJ2, no. 5. A single encyclical was issued on behalf of the Hospitallers of Jerusalem in May 1145 promising essentially the same benefits for those who would make donations to the order and the places which should receive their collectors: PUF4, Nach. Gott., no. 22; see also, for papal support of the Hospitallers, *PL*, Eugene III, no. 527; JL, 8572a; PUKHL, no. 50 (*RRH*, no. 214; JL, 8472a), 51; and PUTJ2, no. 7, a privilege of protection for the Hospital.

[1] For the following, J. Van Engen, *Crisis of Cenobitism*, 269-304.

edification of their communities. As a result, Benedictine religious life became scarcely conceivable apart from its material underpinnings, so that the reform of the one meant the augmentation of the other. In sum, material prosperity occurred as both a condition for and a sign of spiritual prosperity.

Conversely, it has long now been a conventional view of the historiography that the prevailing clerical and monastic concern for temporal or material things was a primary basis of the criticism and 'new reform' expounded from the late eleventh century by members and proponents of the 'new orders' and other movements associated with the *vita apostolica*. The older religious paradigm came increasingly under attack in the course of the twelfth century by the newer White monks and others who directly assailed the nexus between spiritual and material prosperity and steadily dismissed the Benedictines' material success, or preoccupations, as a sign of corruption. In their eyes, the decadence or failures of the Black monks in these regards had alienated them from the true essence of the Rule, from a life of manual labour and eremitic contemplation.[1] According to J. Van Engen, however, the enormous amount of historiographical literature which was produced in the twentieth century on the voluntary poverty of religious, 'much of it implicitly from the viewpoint of the new religious,'[2] has distorted the prevailing attitude towards material well-being as found in the Rule and evidenced by the actual religious and clerical culture.[3] This distortion, he followed, led to a 'fallacy' of a 'crisis of cenobitism'[4] which has been purported to have begun in the late eleventh century and resulted, in the first half of the twelfth, in the eclipse of traditional Benedictinism. Rather, he maintained, the old Benedictine houses continued to flourish and grow in all aspects through the first half of the twelfth century, reaching something of a high-point of 'success,' in terms of numbers of houses and members, including important personages, and wealth around 1150.

Indeed, throughout the twelfth century the old Benedictine attitude which stressed a house's material well-being as a sign of monastic success continued, from the Benedictine's own point of view, seemingly without scruple.[5] But what has not been sufficiently stressed or even

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[1] See, e.g., L. Little, *Religious Poverty and the Profit Economy in Medieval Europe* (Ithaca, 1978); H. Leyser, *Hermits and the New Monasticism: A Study of Religious Communities in Western Europe 1000-1150* (London, 1984).

[2] J. Van Engen, *Crisis of Cenobitism*, 285 n. 73.

[3] In fact, attacks on the Black monks in the first half of the twelfth century, Van Engen maintained, were not nearly as numerous or prominent as has been suggested by the literature of modern historians who have read too literally the Black monks' unobjective critics who themselves sought to justify their own break with traditional monasticism and recruit others for their houses—'their very stridency betrays the uncomfortable position in which the authors found themselves.' J. Van Engen, *Crisis of Cenobitism*, 273.

[4] See, in particular, N.F. Cantor, *The Crisis of Western Monasticism*, 47-67.

[5] See, e.g., *Gesta abbatum Trudonensium: Rodulfi gesta abbatum Trudonensium*, *MGH SS* 10, 233; *Chronicle of Battle Abbey*, 260; Suger of St. Denis, *Liber de rebus in administratione sua gestis*, *PL* 186, col. 1211-40; Peter the Venerable, *Letters*, 327-330, no. 130 (*PL* 189, Bk. 4. XXXVI, col. 366-68). In the following letter, e.g., Peter of Cluny wrote to King Roger of Sicily that 'thus it is that Cluny has many creditors, but few benefactors.' Peter the Venerable, *Letters*, 330-32, here at, 332, no. 131 (*PL* 189, Bk. 4.

observed is the extent to which many of the White monks and their supporters shared in practice a positive belief in the indivisible connection between spiritual and material prosperity as early as the mid-twelfth century.[1] Most recently, C.B. Bouchard argued that holiness could in fact be combined with economic success, and challenged the assumption of most scholars that even the early Cistercian leaders aimed at a lofty and radical separation from economic transactions. While Cistercian hypocrisy in this regard as it came to be perceived in the course of the thirteenth century has become a commonplace, Bouchard argued that from the beginning, even at Cîteaux itself, economic transactions were accepted as normal—though the amount of business as well as the readiness to acquire churches certainly increased throughout the course of the twelfth century.[2] More importantly here, as this thesis attempts to make clear, an orientation towards the world and society which melded the spiritual and temporal, and equated material with monastic success broadly, was a view unmistakably shared by the pope and curia at mid-century, and remained a key characteristic of papal 'policy,' including monastic 'policy,' even at a time when an ascendant 'new reform' party has been largely thought to have seized control of the curia under the influence or guidance of Bernard of Clairvaux, culminating in the election of his own Cistercian pope, Eugene III. As a rhetorical example, the phrase *tam in temporalibus quam in spiritualibus* (occurring in the context of the pope either celebrating or applauding a house or prelate for having flourished or for flourishing thus, or, conversely, attempting to effect the reform of, or deploring or reproving, a house or prelate for having deteriorated or for deteriorating 'as much in temporalities as spiritualities') appeared in at least seventeen letters of Innocent II between 1130 and 1143 from the *Patrologia latina* alone[3] and, more importantly here, in at least twenty-seven of the total papal

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XXXVII, col. 369-71); see also, L. Little, *Religious Poverty*, 69, 235; A.H. Bredero, 'The Controversy between Peter the Venerable and Saint Bernard of Clairvaux,' Petrus Venerabilis *1156-1956: Studies and Texts Commemorating the Eighth Centenary of his Death*, ed. G. Constable and J. Kritzeck (Rome, 1956), 53-71; D. Knowles, 'The Reforming Decrees of Peter the Venerable,' Petrus Venerabilis *1156-1956: Studies and Texts Commemorating the Eighth Centenary of his Death*, ed. G. Constable and J. Kritzeck (Rome, 1956), 1-20; G. Duby, 'The Culture of the Knightly Class: Audience and Patronage,' *Renaissance and Renewal in the Twelfth Century*, ed. R.L. Benson and G. Constable, with C.D. Lanham (Cambridge, Mass., 1982), 248-62, here at, 252-55.

[1] See, e.g., Arnulf of Lisieux, *Invectiva in Girardum Engolismensem episcopum*, *MGH Libelli de lite* 3, 81-108; Arnulf of Lisieux, *Letters*, no. 34, 46; see also, C.P. Schriber, *The Dilemma of Arnulf of Lisieux: New Ideas versus Old Ideas* (Bloomington, 1990), 2-11, 26, 61. Orderic Vitalis commended Hugh d'Eu, bishop of Lisieux from 1050 to 1077, who implored the clerics and laymen gathered around his deathbed to transport him to his own cathedral church: 'The church of St. Peter, prince of the apostles, which my predecessor, Herbert, began, I have completed; I have studiously adorned it and copiously enriched it with both the necessary clerics and other splendid vessels for the divine services.' Ordericus Vitalis, *Historia ecclesiastica* 3, ed. M. Chibnall, *The Ecclesiastical History of Orderic Vitalis* (Oxford, 1969-), Bk. 5. III. 14-16.

[2] C.B. Bouchard, *Holy Entrepreneurs: Cistercians, Knights and Economic Exchange in Twelfth-Century Burgundy* (Ithaca, 1991); on this, see also below, ch. 8.3.

[3] *PL*, Innocent II, no. 8, col. 59, no. 43, col. 93, no. 96, col. 134-35, no. 136, col. 178-79, no. 137, col. 180-81, no. 143, col. 186-87, no. 157, col. 206-07, no. 169, col. 218-20, no. 182, col. 230-31, no. 216, col. 261-64, no. 254, col. 304, no. 315, col. 361-63, no. 343, col. 394, no. 417, col. 480, no. 476, col. 547, no. 483, col. 554-55, no. 589, col. 646. See also, for his privileges of protection, *PL*, Innocent II, no. 149, col. 192-93, no. 168, col. 217-18, no. 186, col. 237-38, no. 191, col. 240-42, no. 423, col. 486-87.

letters of the decade succeeding his pontificate between 1143 and 1153[1]—references to the privileges of protection of Celestine II, Lucius II, and Eugene III would greatly inflate this reckoning.

Thus, in early 1152 Eugene III wrote to the monks of St. Benedict, Hulme, confusedly associating monastic discipline and worldly renunciation with temporal growth: 'We trust that the orders of the divine oracle and the habit of religion itself which you wear exhorts you to hold a sufficient contempt of earthly things and a desire for heavenly things; nevertheless, lest remissness whatsoever intervenes to diminish your zeal, we have decreed that you should be specially exhorted with our letters.' A lengthy moral lecture on monastic discipline followed, exhorting them to 'observe the pact which you have contracted against the devil, so that you more fully touch nothing from among his things (*res*) and, because you have burned his tunic, do not don it further; otherwise, he will capture you in the damnation of eternal death, just as ones guilty of breaking a sound pact.' At this point in the letter the pope seems to have associated proper religious observance with an avoidance of worldly things—*res*. However, the pope then proceeded to exhort the monks to submit themselves completely to their abbot so that 'that which must be corrected in your church might be thus corrected, that which must be instituted thus instituted, with the Lord the Author, so that God always obtains a pleasing growth as much in spiritualities as in temporalities and no sinister rumour concerning you comes to exasperate the apostolic ear.'[2]

In general, temporal growth was a consistent theme in papal letters concerning efforts to 'reform' lapsed houses, where the standard applied to the 'culture of true religion.' Thus, in April 1148 Eugene wrote to the monks, *liberi*, and *ministeriales* of the monastery of Fulda, recalling that, after the death of their abbot, he had ordered in person certain of their brethren to elect canonically a new pastor, 'through whom in the monastery of Fulda, because through the negligence of the abbot it has been bled as much in terms of spiritualities as temporalities, a culture of true religion pleasing to God might be restored.'[3] In June 1147 Eugene wrote to Peter the Venerable and his 'reformed' Cluny: 'Nearly the entire world recognises how particularly and especially the monastery of Cluny tends to the holy Roman Church, and how much it has advanced in religion through the grace of God, also how many it has taught to live well through the example of its good conversion.' Accordingly, the pope noted, on account of certain crimes of the monks of Balma he was depriving their monastery of the dignity of an abbey and was committing it to Cluny

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[1] *PL*, Lucius II, no. 86, 94; *PL*, Eugene III, no. 185, 204, 256 (*IP* 7/1, 339/42; JL, 9189), 259, 284, 285, 307, 308, 346, 458, 465, 495, 548, 551, 561; *APRI* 3, no. 76 (*IP* 3, 325/29; *IP* 10, 383/42; JL, 8929); *EPRI*, no. 195 (JL, 8887), 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959), 207 (JL, 9632); PUE1, no. 49, 50 (*HP*, 88; JL, 9513); PUE3, no. 82; PUS2, no. 52; PUF1, Nach. Gott., no. 36; PU in Mailand, no. 9 (*IP* 7/1, 339/38; P-H *Iter*, 239; JL, 8749; the same, nearly, as *Antiquitates* 5, 259-60, *PL*, Eugene III, no. 158, both from Innocent II).

[2] PUE1, no. 49.

[3] *PL*, Eugene III, no. 284.

as a dependent priory. Therefore, he exhorted the abbot of Cluny: 'it is in your interest to attend to the restoration of the place itself and the reform of the religion, so that the place itself might enjoy a growth pleasing to God under your governance as much in spiritualities as in temporalities.'[1] And apparently the papacy even already considered the Cistercians themselves champions of this sort of twofold success, writing a year later to the abbot of Valbonnais that, 'because the brethren of Valle-magna greatly desire to receive and observe your order, we order your esteemed person...to receive them amongst the brethren of the Cistercian order, and strive to provide for them, just as for your special brothers, as much in spiritualities as in temporalities.'[2]

To be sure, the papal 'policy' in this regard was neither a Benedictine nor a monastic one *per se*, but extended to all churches everywhere. Thus, in early 1152 Eugene III wrote to the entire clergy and populace of the church of Cologne, informing them that he had received and consecrated their archbishop-elect and granted him the *pallium*. The pope thereby ordered them to receive, honour, and obey their new archbishop so that their church, 'which is greatly worn as much in spiritualities as temporalities, might rise up again, with God granting, to the status of its integrity, and you might attain to joy through him himself, and he might attain to manifold wealth and fruit through you in the sight of God.' The letter thereby specifically ordered them 'to confer efficaciously troops and aid (*vires et auxilium*) just as good and devoted sons for the sake of the reform of the status of the religion and honour of the church itself, and for the sake of the recovery of the goods and possessions or rather benefices of the same church, which have been illicitly conceded, distracted, or alienated, whether from the *mensa*, or *camera*, or alms of the archbishop himself, or from the *mensa* of his abbots, provosts, or abbesses, or from the prebends of his canons.'[3] The same paradigm was applied even to the whole movement of the Second Crusade. And thus in July 1147 the pope wrote to the bishop of Olomouc commending his own cardinal legates, sent *a latere* 'for the sake of our most cherished sons, the illustrious kings Conrad of the Romans and Louis of the Franks, and also for the armies with them,' so that they 'might keep them in a concord and esteem and provide for their well-being, with the Lord as the Author, as much in spiritualities as in temporalities.'[4]

Concomitant with material and landed prosperity, the practices of the Black monks have been thought to have been summarily rejected by the White monks on account of their devotion to an ideal of 'perennial prayer.' These Black monks carried a self-defined role as soldiers of Christ, battling for the world, redeeming its wages of sin through intercession by devoting their every hour

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[1] *PL*, Eugene III, no. 185; see also, on this case, *PL*, Eugene III, no. 186, 187, 203; JL, 9123. For a similar example, see also, *PL*, Lucius II, no. 86.
[2] *PL*, Eugene III, no. 346.
[3] *PL*, Eugene III, no. 465; on the same day a privilege of protection was issued for the new archbishop. *PL*, Eugene III, no. 464.
[4] *PL*, Eugene III, no. 204.

to prayer in a continuous and elaborate liturgy. This function as society's *oratores* was part and parcel of the great influx of wealth from the lay world which benefited Benedictine houses: their worship had to be stately and grand; and their intercession proceeded with luxurious adornment, as it was not decadent but laudatory, and efficacious, that they should approach God by way of ever finer vessels, vestments, and buildings, which itself was a measure of devotion to their primary and sanctioned vocational task.[1] Again, however, as with material wealth generally, these things have been thought to have been seen by critics of the Black monks as a sign and concomitant of decadence, resulting in avarice, ostentation, and corruption, and interfering with and even precluding the more vital monastic activities of manual labour and contemplation.[2] Yet, it was also quite clear that the same 'Bernardine' popes in the period 1143-53 held a special regard for the intercessory function of all religious.[3] Thus, Celestine II wrote to Abbot Peter and the monks of Cluny, asking 'through the Omnipotent Lord that you aid me, tiring under this burden of pastoral care, with the intercession of your prayers.'[4] Lucius II wrote to the abbess and sisters of Fontevrault: 'since we trust greatly in you, we entreat your charity through Omnipotent God to make special prayers to the Lord for me and strive to see that it is done through the entire congregation of your order.'[5] A month later he repeated the same request again to Abbot Peter and the monks of Cluny.[6]

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[1] For instance, John of Salerno described St. Martin, Tours in the early tenth century as 'a place fruitful of all virtues, remarkable for miracles, abounding with riches, and conspicuous for all religion.' John of Salerno, *Vita S. Odonis abbatis Cluniacensis secundi*, *PL* 133, Bk. 1. XVI, col. 51. Over two centuries later, Battle Abbey in England claimed to be unanimously regarded as second to none of all English churches in *religio, bonitas, mansuetudo, caritas, humanitatisque gratia*,' and in '*bonorum omnium superabundante copia. Chronicle of Battle Abbey*, 118. In this way, an 'overflowing abundance of riches' and 'all good things' did not bar or transgress the fulness of 'religion,' which was, in their eyes, the liturgy, but elevated it.

[2] See, J. Van Engen, *Crisis of Cenobitism*, esp. 280-97; L. Little, *Religious Poverty*, 66-67; N. Hunt, *Cluny under Saint Hugh, 1049-1109* (London, 1967), 82-83; B.H. Rosenwein, 'Feudal War and Monastic Peace: Cluniac Liturgy as Ritual Aggression,' *Viator* 2 (1971), 129-57, esp. 132; D. Knowles, *Monastic Order*, 425-26, 713-14; D. Knowles, *Reforming Decrees of Peter the Venerable*, 1-20; C. Waddell, 'The Reform of the Liturgy from a Renaissance Perspective,' *Renaissance and Renewal in the Twelfth Century*, ed. R.L. Benson and G. Constable, with C.D. Lanham (Cambridge, Mass., 1982), 88-109; G. Constable, *Spiritualia*, 315-16; G. Duby, *Knightly Class*, 252-55. In the Benedictine Rule, the liturgy took up around a quarter of a monks' waking hours; by the late eleventh century it had expanded to fill nearly the entire day. Originally, the number of daily psalms to be recited was forty; by the end of the ninth century it was 138; and by the end of the eleventh, 170. The cost of the liturgy was correlated to the maintenance of the number of monks who no longer contributed any of their time to productive labour: 150 at Hirsau and at Christ Church, Canterbury, and twice as many at Cluny.

[3] In several instances in the papal letters of 1143-53 the pope indeed referred to the religious as those 'soldiering for the Lord,' a common metaphor for religious prayer; see, *PL*, Eugene III, no. 48 (Otto of Freising, *Gesta*, 71-73; JL, 8796), 147, 148, 174, 361; *EPRI*, no. 199; PUE1, no. 54; PUE2, no. 43; the metaphor occurred much more frequently in the privileges of protection. The metaphor also occurred in at least three letters of Innocent II in the *Patrologia latina*; see, *PL*, Innocent II, no. 169, col. 218-20, no. 548, col. 616-17; for his privileges of protection, see also, *PL*, Innocent II, no. 229, col. 277-78, no. 450, col. 518-19, no. 469, 537-38, no. 474, col. 544-45, no. 525, col. 591-92, no. 551, col. 619-20, no. 557, col. 624.

[4] *PL*, Celestine II, no. 2.

[5] *PL*, Lucius II, no. 79.

[6] *PL*, Lucius II, no. 92.

Eugene III himself wrote to the prior of the reforming regular canons of S. Frediano in March 1145, having announced his own election as pope, in the rare use of the first person: 'Therefore, seeing myself oppressed with such a great burden, we have arranged to visit your charity with apostolic letters, asking that for my sake you make special prayers to God and strive to see that they are made by the congregations of religious brethren which are in those parts.'[1] And in August 1152 he wrote to the abbot of Cîteaux and all of the abbots congregated for the general chapter of the Cistercian Order: 'Further, we, placed on the summit of the mountain, where we are driven back on all sides by the winds of storms, expect that we should be able to remain to some extent in such a great storm through the gift of God if we should merit to obtain the intervention of your prayers before God.'[2] Nevertheless, it should be noted that all of this was not simply a change in attitude or 'policy' which occurred after the death of Innocent II, who himself in numerous letters and privileges made a point to stress the religious' special function in society of perennial prayer and on several occasions solicited their services to that end for his own sake.[3]

At the same time, Eugene especially seems to have had a certain 'Benedictine' regard for those ecclesiastical ornaments which earned the ire of other reformers. In May 1145 he wrote to the abbot and brethren of the monastery of S. Benedetto Po (di Polirone) reissuing nearly verbatim a letter of Innocent II:[4] 'Our heart is pricked with the pious inspiration of the divine to reform for the better places formerly instituted in the observance of ecclesiastical religion, and to relieve their destitution according to the duty of our office.' Similarly, 'the faithful construct churches to the honour of God, and bestow possessions and estates upon them, so that, specifically, a religious person might be set up in that place who might humbly and devoutly serve the divine majesty, with whose copious prayers to God as much the founders as also their predecessors and posterity, having been absolved from the ties of sin, might merit to attain to, in return for temporal beneficence, an eternal reward.' To this end, he noted, the countess Matilda 'enriched the church of S. Cesario [sul Panaro] in Vilzacara...having been offered to St. Peter...with her own goods and possessions; she greatly adorned it with books, vessels, and other ecclesiastical ornaments; and this has been brought about so that brothers, who would have the leisure for the service of Omnipotent

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[1] *PL*, Eugene III, no. 1.

[2] It continued: 'moreover, so that before Him through your prayers we might always avail to find ready credit, and that which we should not avail to obtain through our own merits we might through your intercessions, we desire your charity for those things which belong to God, for the observance of the order, for the maintenance of discipline...' And later he added that those same Cistercian abbots should 'consider that those whose lamps are extinguished might desire to partake of your oil; and many, who have rotted just as a yoked beast in their own dung, committed by your governance unto the refuge of celestial grace, desire to be commended with prayers.' *APRI* 2, no. 403 (JL, 9603).

[3] See, *PL*, Innocent II, no. 55, col. 104, no. 78, col. 118-19, no. 158, col. 208-09, no. 207, col. 256, no. 280, col. 329-30, no. 299, col. 345, no. 331, col. 377-78, no. 553, col. 620-21, no. 560, col. 626, no. 568, col. 630; for his privileges of protection, see, *PL*, Innocent II, no. 83, col. 122-23, no. 308, col. 353-54, no. 440, col. 505-07, no. 545, col. 613-14, no. 546, col. 614-15.

[4] *PL*, Innocent II, no. 158, col. 208-09.

God, in accordance with the Rule of St. Augustine, would be placed in the same place.'[1] And in 1151 Eugene wrote to the abbess and nuns of St. George, Prague, consoling them over the death of the bishop of Olomouc while reminding them that 'on his deathbed he bestowed upon us with pious devotion and ordered to be carried to us those worthy ornaments which through your experienced and trained hands he more zealously caused to be used in worship for the ministry of the altar during the solemnities of the mass.'[2] Similarly, liturgical ornaments were the object of at least two clerical controversies in this period.[3]

In sum, the papal record of the period around the mid-twelfth century demonstrates that the curia, in keeping with the attitude representative of the prevailing clerical culture, regarded the success of all churches, including all monasteries, to consist as much in temporal as in spiritual well-being. Indeed, as far as the curia was concerned, spiritual well-being was hardly conceivable apart from temporal prosperity. And it was through this worldly prosperity that those same monasteries or other religious houses could engage in their most efficacious function which was prayer for the faithful and beneficent. At the same time, the curia was perceived in the provinces as being pre-eminently placed to attend to the proprietary or possessory or even criminal concerns of the churches and churchmen, specifically as a central deeding office, a tribunal, and a policing agency. As a result, these concerns became largely the business of the curia as a matter of daily routine. This was determined by both the amount and nature of the business generated in the provinces, which created a profound demand for more satisfactory justice and protection, including title deeds, as well as the nature of the petitionary process itself. The curia's inability to govern or administer beyond such a process was itself determined by technological limitations placed upon a central organisation overseeing a loosely-knit polity as large as Latin Christendom. These things in sum determined the course and nature of papal governance in the mid-twelfth century. Thus, the relative silence in the papal record on the direct intervention in the churches with regard to actual spiritual matters suggests that those things, as far as the curia and churches were concerned, remained predominantly under the purview of the diocesan administration. But it was the traditional ecclesiastical culture which countenanced and even encouraged an active solicitude for one's own temporal state, as well as the precarious security of one's own person or possessions, which provided the fundamental basis of the active form of governance which the curia exercised on behalf of the churches of the West in the aftermath of the Investiture Controversy and the subsequent schism of 1130.

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[1] PU in Mailand, no. 9 (*IP* 7/1, 339/38; P-H *Iter*, 239; JL, 8749; the same, nearly, as *Antiquitates* 5, 259-60, *PL*, Innocent II, no. 158, col. 208-09, both from Innocent II).
[2] *PL*, Eugene III, no. 444.
[3] *PL*, Eugene III, no. 127, 383.

2.5 SPIRITUALITIES IN THE PAPAL LETTERS

All of Book Five of the *De consideratione*—far and away its longest book—was a manual of sorts for the pope's own spiritual-mystical edification. Elsewhere, Bernard reminded Eugene III that there was much that needed to be done in the Church, as the prophets could not correct everything. The pope's actual preoccupations—tending to the possessions and lawsuits of the Church—he made clear were fully distracting him from those things which he ought to have been devoting his time and energy towards: praying and teaching the people; building up the Church and meditating on God's Law; conversion and proselytisation; the reunification of the Greek Church; the correction of the sinful, perverse, corrupt, apostate, heretical, and schismatic.[1] In fact, consistent with Bernard's expostulations, such pursuits were not part of the regular interests of the papal office as demonstrated by the output of its chancery and personnel in the period 1143-53: of well over 1,000 extant papal letters of this period, fewer than 100 in total (9.1%) did not concern either clerical temporalities or *controversiae*.[2] Indeed, major 'spiritual' issues and causes which left a trace in the papal record of the decade 1143-53 are remarkably scarce; while almost no letters concerned actual articles of faith. Similarly, while at least twenty-five letters of this period did in fact concern the substitution of secular with regular clerics,[3] four of these letters involved a single case concerning a church in the diocese of Lucca;[4] and five more concerned the reform of the church of St. Geneviève, Paris by Abbot Suger of St. Denis and the canons of St. Victor, Paris, sponsored by the pope at the behest of the French king.[5] And in all such cases the curia acted with a decided lack of initiative, merely confirming or supporting the acts of petitioners. Furthermore, only four of these twenty-five letters in total did not also concern clerical temporalities or *controversiae*.[6]

At the same time, the most prominent cases from this period concerning the reform of secular houses, those involving St. Geneviève, Paris and S. Pantaleone, Lucca, did each ultimately

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[1] See, *De consideratione*, Bk. 1. IV. 5 (31), Bk. 2. VI. 9 (56-57), Bk. 2. VI. 11 (59), Bk. 3. I. 3-4 (82-84).
[2] On this, see, Appendix 3. C.R. Cheney noted of Innocent III's pontificate that those cases which affected the morals of the clergy 'only touched a small proportion of the cases which flooded the curia.' C.R. Cheney, *Becket*, 72.
[3] *PL*, Celestine II, no. 28 (*RRH*, no. 221; JL, 8481); *PL*, Eugene III, no. 82, 87, 100, 159, 168, 208, 209, 297, 298, 388 (JL, 9392), 404, 413, 414, 495; JL, 8815, 9500, 9609; *APRI* 1, no. 212 (JL, 9115); PUE2, no. 59; PUF1, no. 41 (JL, 8756); PUF8, no. 23, 31, 32 (*PL*, Eugene III, no. 320; JL, 9297); PUS2, no. 52. See also, *PL*, Lucius II, no. 94; *PL*, Eugene III, no. 408, 505, 506; JL, 8812; PUE2, no. 56; *EPRI*, no. 203 (JL, 9243); PUN, no. 57; PU in Mailand, no. 9 (*IP* 7/1, 339/38; P-H *Iter*, 239; JL, 8749; the same, nearly, as *Antiquitates* 5, 259-60, *PL*, Innocent II, no. 158, col. 208-09, both from Innocent II); essentially all of these involved also either clerical temporalities or *controversiae*; cf., JL, 8812.
[4] *PL*, Eugene III, no. 159, 168, 208, 209; see also, *IP* 3, *403/31.
[5] *PL*, Eugene III, no. 297, 298; PUF8, no. 23, 31, 32 (*PL*, Eugene III, no. 320; JL, 9297); see also, for this case, *PL*, Eugene III, no. 305, 332, 333, 334, 383; PUF8, no. 34 (JL, 9323), 39 (JL, 9637); on this cause, see also, L. Grant, *Abbot Suger*, 166-69.
[6] *PL*, Eugene III, no. 159, 404; JL, 9609; PUF8, no. 31.

concern the papacy primarily as controversies, demonstrating the potential difficulties and problems associated with the substitution of regular canons and the curia's accompanying juridical role. In the case of St. Geneviève, the pope—as he did in a dispute between the bishop and cathedral canons of Zaragoza over the bishop's attempt to install regular canons in his chapter[1]—ultimately compelled the reformers to compromise with the secular canons, allowing the latter to live out their lives in their current orders and with their prebends intact.[2] Conversely, in June 1150 Eugene adjudicated possession of a certain hospital in Perugia for its rector on the condition that 'a congregation of canons or monks not be created there.'[3] Broadly, the papal record seems to indicate that the curia in this period was not actively seeking to reform secular houses and chapters or others. While reform initiatives in the provinces were certainly welcomed and even supported, papal involvement in these causes resulted basically in simple confirmation and at other times in litigation through appeal to the pope's tribunal, in which cases the pope was invariably concerned as much for the arrangement and protection of the parties' revenues and temporalities.

Otherwise, only six extant letters of the period mentioned 'heresy' or 'heretics.' In a lengthy *arenga* to a summons for the Council of Reims, Eugene declared in October 1147 that the Roman primacy determined that the papacy 'should zealously tend to emerging heresies and other wicked things, errors, and pollutants which ought to be checked by it itself;'[4] and canon eighteen of that council forbid anyone to 'maintain or defend heresiarchs and their followers who dwell in parts of Gascony or Provence or elsewhere, nor anyone furnish refuge for them in their lands.' While the remaining canons of this council were on the whole unoriginal—most in fact were simply renewals of the two Innocentine councils of Reims (1131) and Second Lateran (1139)[5]—this conciliar canon represents one of only two measures in the entire papal record of this period specifically directed at or even acknowledging an actual growing heresy problem, especially as it existed in southern France.[6] Likewise, the one doctrinal cause which did involve

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[1] PUS2, no. 52.
[2] *PL*, Eugene III, no. 305.
[3] *APRI* 2, no. 396 (JL, 9396).
[4] Appendix 1, no. 268 (JL, 9149 [complete text] [*PL*, Eugene III, no. 232]).
[5] See, N. Häring, *Notes*, esp. 45, and 58, where he stated that, 'Politically speaking, the basic aim of the council was a very modest one: not world domination but moral reform. But the preparation for its successful launching was so poor that its message was little more than the lifeless repetition of previously promulgated canons;' cf., I.S. Robinson, *Papacy*, ch. 3, esp. 121, 131, 135-36, 140, 142, 144-45. For the canons of Reims, Mansi 21, 713-18 (JL 2, 52-53; *Decretales*, Gregory IX, Bk. 2. I. 2, for c. 5), Council of Reims, cc. 1-18; for the council, see, Mansi 21, 711-36, 739-42; for other primary sources, see, JL 2, 52-53. For the canons of Reims (1131), see, Mansi 21, 457-62 (JL 1, 850-51), Council of Reims; and for Second Lateran (1139), see, Ecumenical Councils 1, 197-203 (Mansi 21, 525-33; JL 1, 885-86), Second Lateran Council.
[6] See, *PL*, Eugene III, no. 560, which was one among a series of eight separate letters and a privilege of protection issued on the same day in February 1153 for the bishop of Arras, concerning principally violations of the bishop's temporalities, but also addressing the bishop's reports of a growing heresy problem in his

the pope, the examination of Gilbert de la Porrée's 'suspect' doctrines conducted after the Council of Reims, was dismissed without coming to any resolution, or indeed without any sign of real interest on the pope's part in theological or doctrinal niceties. Rather, the curia itself was as much involved in clerical litigation in the course of the Council of Reims as with other purely 'spiritual' matters.[1]

The remaining letters in which the terms 'heresy' or 'heretic' occurred all came from the final year of Eugene III's pontificate.[2] In September 1152, in a matter which struck immediately at the heart of the pope's own territorial 'policy,' Eugene reported to the German royal counsellor Abbot Wibald of Stavelot and Corvey that a splinter faction of the Rome commune, under the leadership of the 'heretic' Arnold of Brescia, as the pope described the radical reformer, was plotting to overthrow the current revolutionary government and elect its own emperor.[3] Arnold himself had preached that a life of apostolic poverty should be imposed on all clerics, and had long been an outspoken opponent of the first water of the worldly entanglements of the clergy, especially the papacy, and denounced the pope and cardinals as blood-thirsty princes who thought of nothing more than their own material aggrandisement and temporal interests.[4] What was significant here for Eugene's letter of 1152 was that the pope equated Arnold's subversive behaviour, by which he sought to deprive the pope of his temporal wealth and state, with 'heresy.' Likewise, the terms 'schism' or 'schismatic' appeared in only three letters of the same period, all occurring within four months of each other.[5] And again, in July 1148, Eugene wrote to all of the clerics of Rome on account of certain chaplains who were following the 'fallacious and invidious enemy of the human race through the schismatic' Arnold of Brescia, and were revolting against the

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church; see, *PL*, Eugene III, no. 558-66. Otherwise, while it is true that the second item which Eugene placed on the agenda at Reims, beyond the promulgation of the canons, was the case of the Breton 'heretic' Eon de Stella, Otto of Freising passed him off as not even 'worthy of the name heretic,' while N. Häring described him merely as a 'mental case' who 'seems to have caused some amusement' at the council; and in any case this 'heretic' was simply handed over to Abbot Suger to be dealt with—dying soon after the council; see, Otto of Freising, *Gesta*, 94-95; N. Häring, *Notes*, 45. It is also known that Bernard of Clairvaux did in fact undertake a mission to the Languedoc in the summer of 1145 to deal with 'heretics.' The exact nature of this mission and the 'heresy' in question are obscure—there is no mention of it in the papal record—although it almost certainly did not involve Cathars if proper heretics at all in a doctrinal sense; see, R.I. Moore, 'St. Bernard's Mission to the Languedoc in 1145,' *Bulletin of the Institute of Historical Research* 47 (1974), 1-10; M. Lambert, *Medieval Heresy* (Oxford, 1992), 55-57.

[1] See, ch. 1.3, 2.2, 3.1, and 4.3.

[2] *PL*, Eugene III, no. 524, 560, 577; PU in Pisa, no. 4 (*IP* 5, 62/213).

[3] *PL*, Eugene III, no. 524.

[4] On Arnold, see, *PL*, Eugene III, no. 311, 463/545 (*Decretales*, Gregory IX, Bk. 5. XVII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4; JL, 9508/9656); *HP*, 20-40, 50-51, 59, 60, 62-65; Otto of Freising, *Gesta*, 61-69, 121-22, 143-44; *LP*, 389-90; Bernard of Clairvaux, *Letters*, no. 189, 195, 196, 243, 298; *Barbarossa in Italy*, 22-23, 29-30; Wibald, no. 347 (*Constitutiones*, 188-89, no. 134; *IP* 1, 180/9); Romuald of Salerno, *Chronicon*, 230-32; *Annales Casinenses*, 310; *LC*, 330; *Annales Ceccanenses*, 284; Arsenio Frugoni, *Arnaldo da Brescia*; G.W. Greenaway, *Arnold of Brescia*; R.L. Benson, *Political* renovatio, 344-56.

[5] When discussing the Greek Church, the pope never referred to a 'schism' in this period; see, S. Runciman, *Eastern Schism.*

cardinals and their archpriests. The pope thereby warned that all who presumed to do so would be deprived of both office and benefice.[1] Despite the rhetoric, this was, again, a fundamentally political matter; and Arnold himself, for compromising the pope's own temporal position, was branded alternately as a sower of 'heresy' as well as 'schism.'[2]

Furthermore, only five papal letters of the same period concerned or mentioned 'simony.'[3] In each of these cases the question of simony resulted from accusations brought to the curia independently in the course of clerical controversies as cases of appeal or first instance—three of the cases also concerned clerical temporalities.[4] Otherwise, the term *spiritualia* was explicitly mentioned in only thirty-one letters of the period, while in all but five instances appearing in the context of the clause 'as much in temporalities as in spiritualities.'[5] Three of these remaining five letters, nevertheless, also concerned in some manner clerical temporalities or *controversiae*.[6] In sum, papal concern for or intervention in the purely 'spiritual' welfare of the churches in the period 1143-53 was profoundly overshadowed by a concern for what, by modern standards at least, might be deemed to have been a material or temporal welfare. As discussed already at length, it was for the papacy exceedingly difficult to conceive of spiritual well-being in isolation from the temporal. Thus, when the pope wrote to other churchmen concerning 'reform,'[7] 'religion,'[8]

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[1] *PL*, Eugene III, no. 311.

[2] For the other two letters, one was canon seventeen of the Council of Reims in late March 1148 simply reiterating canon thirty of the Second Lateran Council, voiding the ordinations made by the antipope Anacletus II 'and other schismatics' during the schism of 1130. Mansi 21, 713-18 (JL 2, 52-53), Council of Reims, c. 17; Ecumenical Councils 1, 197-203 (Mansi 21, 525-33; JL 1, 885-86), Second Lateran Council, c. 30 (here at, 203); see also, *HP*, 43; *LP*, 383. And in June 1148 Eugene III wrote to the bishops of Trier and Verdun and the archdeacons of Metz and Toul concerning a *castrum* built illegally by Duke Matthew of Lotharingia in injury to the bishop of Toul with the following *arenga*: 'Just as the holy Church ought to shine in the perpetual splendour of unity in spiritualities without wrinkle, blemish, and *schism*, so in temporalities it ought to be afflicted by no oppression, disturbed by no coercive dues, endure nothing extraordinary; for it is advantageous that every church, persevering immutably in the prerogative of its status, remains free and immune from any such vexation.' Appendix 1, no. 87 (*PL*, Eugene III, no. 307).

[3] *PL*, Celestine II, no. 25; PUE2, no. 39 (JL, 8628), 65 (JL, 9428); PUS1, no. 59; PU in Pisa, no. 4 (*IP* 5, 62/213).

[4] PUE2, no. 65 (JL, 9428); PUS1, no. 59; PU in Pisa, no. 4 (*IP* 5, 62/213).

[5] *PL*, Eugene III, no. 512, 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 67; *IP* 5, 251/25, 181/6; JL, 9654); JL, 9376; Mansi 21, 713-18 (JL 2, 52-53), Council of Reims, c. 5 (*Decretales*, Gregory IX, Bk. 2. I. 2); PUF8, no. 41 (*PL*, Eugene III, no. 547; JL, 9661).

[6] *PL*, Eugene III, no. 512, 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 67; *IP* 5, 251/25, 181/6; JL, 9654); PUF8, no. 41 (*PL*, Eugene III, no. 547; JL, 9661).

[7] In the period 1143-53 'reform' terminology with its various synonyms appeared in only two dozen or so papal letters, see, *PL*, Lucius II, no. 86, 91; *PL*, Eugene III, no. 185, 187, 209, 254, 285, 414, 465, 491, 493, 495, 551, 561; JL, 9376; *IP* 8, *326/25; *APRI* 3, no. 91 (JL, 9292); *EPRI*, no. 207 (JL, 9632); PUE3, no. 62, 82; PUE2, no. 59; PUF1, no. 41 (JL, 8756); PUS1, no. 53 (JL, 8546); 54 (JL, 8928); PU in Mailand, no. 9 (*IP* 7/1, 339/38; P-H *Iter*, 239; JL, 8749; the same, nearly, as *Antiquitates* 5, 259-60, *PL*, Innocent II, no. 158, col. 208-09, both from Innocent II). In every instance this type of terminology applied to institutions as opposed to persons *per se*—that is, 'reform' terminology in this period continued to be impersonal—and again, nearly every one of these letters also concerned either clerical temporalities or *controversiae*; cf., JL, 9376; *IP* 8, *326/25 (*laudatum* in a privilege of 1169). For 'reform' explicitly in terms of non-spiritualities, as in the papal concern to 'reform the peace' between litigants, see, *PL*, Celestine II, no. 41; *PL*, Lucius II, no. 89; *PL*, Eugene III, no. 60, 376, 429, 462; PUS1, no. 57. On this, see, I.S. Robinson, *Reform*, 268-300; G. Constable, 'Renewal and Reform in Religious Life: Concepts and Realities,' *Renaissance and Renewal in the*

'pastoral care,'[1] or 'correction,'[2] as with the more specific categories of *spiritualia*, 'heresy' or

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Twelfth Century, ed. R.L. Benson and G. Constable, with C.D. Lanham (Cambridge, Mass., 1982), 37-67. Throughout the Gregorian period, as in the case of traditional Benedictine monasticism, 'reform' of churches or houses invariably carried a dual significance: exponents of the reform party of the late eleventh century almost never considered the reform of religion, or clerical or monastic discipline—in a word, the 'spiritual'—apart from the reform, recovery, or amelioration of the properties, buildings, or temporalities of a church: for examples from the sources, see, e.g., *Chronica monasterii Casinensis*, 362, 408; Gregory VII, *Das Register*, Bk. 2. XLV. 184; *Vita Willihelmi abbatis Hisaugiensis auctore Haimone*, *MGH SS* 12, 218-19, 225; *Vita Norberti archiepiscopi Magdeburgensis*, *MGH SS* 12, 694-95; see also, G. Constable, *Spiritualia*, 305, 317-19; G. Constable, *Monastic Tithes*, 83-98; D.B. Zema, 'Economic Reorganisation of the Roman See during the Gregorian Reform,' *Studi Gregoriani* 1 (1947), 137-68; G. Miccoli, *Chiesa gregoriana: Ricerche sulla riforma del secolo XI* (Storici antichi e moderni, n.s. 17: Florence, 1966), 28; J. Van Engen, *Crisis of Cenobitism*, 269-304; I.S. Robinson, *Reform*, esp. 268-300; I.S. Robinson, *Institutions*, 444-45; J. Gilchrist, *The Church and Economic Activity in the Middle Ages* (London, 1969), esp. 99; D. Herlihy, 'The Agrarian Revolution in Southern France and Italy, 801-1150,' *Speculum* 33 (1958), 23-41, here at, 32-33; D. Herlihy, 'Church Property on the European Continent, 701-1200,' *Speculum* 36 (1961), 81-105, here at, 83; G. Duby, *Knightly Class*, 252; W.E. Lunt, *Revenues*, esp. 8-15, 31; C.J. Holdsworth, 'Ideas and Reality: Some Attempts to Control and Defuse War in the Twelfth Century,' *Studies in Church History* 20 (1983), 59-78, here at, 69. See also, ch. 2.4 and 8.3.

[8] In total, the term *religio* appeared in around 100 letters of the period 1143-53; only seventeen of these did not concern either clerical temporalities or *controversiae*: *PL*, Celestine II, no. 14, 29 (*RRH*, no. 222; JL, 8482); *PL*, Lucius II, no. 85 (P. Classen, *Gerhoh von Reichersberg*, 342, no. 33; JL, 8577); *PL*, Eugene III, no. 1, 3, 55, 111 (P. Classen, *Gerhoh von Reichersberg*, 346, no. 41; JL, 8922), 118, 119, 159, 227, 241, 404, 418; *APRI* 2, no. 400 (JL, 9564); PUF8, no. 31; PUTJ1, no. 15.

[1] The exact phrase 'pastoral care (*pastoralis cura*)' occurred in two proper *arengae*, each concerning temporal affairs: Appendix 1, no. 21 (PUE1, no. 50 [*HP*, 88; JL, 9513]), 64 (PUE3, no. 78); see also, Appendix 1, no. 76, 79, 81. The phrase also occurred in two other *arenga*-like statements, and the term 'pastoral office' in one other *arenga* and another *arenga*-like statement, each of which concerned the temporal affairs of religious: Appendix 1, no. 25 (*PL*, Eugene III, no. 361), 79 (*PL*, Eugene III, no. 469 [Wibald, no. 353]), 81 (Wibald, no. 354 [JL, 9521]), 90 (*PL*, Eugene III, no. 472). Another *arenga* defining the 'priestly care' concerned clerical temporalities. Appendix 1, no. 20 (Nachträge zu den römischen Berichten, no. 8 [*IP* 1, 141/31]). The adjective 'pastoral' occurred in six additional letters, each concerning either clerical temporalities or *controversiae*: *PL*, Celestine II, no. 2; *PL*, Eugene III, no. 427 (*pastoralitas*), 465; PUF2, no. 58; PUF9, no. 42; PUS2, no. 66. In total, the noun *pastor* appeared in over forty letters of this period regardless of *arenga*; only two of these did not also concern clerical temporalities or *controversiae*: *PL*, Lucius II, no. 36; *PL*, Eugene III, no. 98; for the rest, see, *PL*, Celestine II, no. 35, 44; *PL*, Lucius II, no. 40, 41, 59; *PL*, Eugene III, no. 96, 97, 123, 126, 152, 254, 264, 284, 285, 296, 308, 342, 458, 465, 521, 570/71; *EPRI*, no. 187 (JL, 8547), 190 (JL, 8612), 194 (JL, 8888), 195 (JL, 8887), 200 (JL, 9079), 207 (JL, 9632); PUE1, no. 49, 50 (*HP*, 88; JL, 9513); PUE3, no. 50, 62, 82; PUE2, no. 63; PUF2, no. 24; PUS1, no. 53 (JL, 8546), 54 (JL, 8928); PUS2, no. 66; PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); PU in Florenz, no. 10 (*IP* 3, 122/18); PU in Pisa, no. 5 (*IP* 5, 63/214).

[2] Reference to papal 'correction (*correctio/corrigere)*' occurred in at least sixty-three extant papal letters of the period 1143-53, not including incidence in the eschatol or anathema clauses; only four of these letters did not also concern clerical temporalities or *controversiae*: *PL*, Celestine II, no. 14; *PL*, Eugene III, no. 3, 159; PUE3, no. 63; for the rest, see, *PL*, Celestine II, no. 20; *PL*, Lucius II, no. 91; *PL*, Eugene III, no. 25, 105, 135, 149, 209, 231, 239, 244, 254, 256 (*IP* 7/1, 339/42; JL, 9189), 264, 395, 414, 468, 470, 472, 476, 495, 499, 512, 532, 560, 561, 562, 570/71; JL, 9149 (complete text) (*PL*, Eugene III, no. 232); Mansi 21, 713-18 (JL 2, 52-53), Council of Reims, c. 4; *APRI* 2, no. 403 (JL, 9603); *APRI* 3, no. 82 (*PL*, Eugene III, no. 141; JL, 8975); *EPRI*, no. 190 (JL, 8612), 192 (JL, 8833), 193 (JL, 8877), 202 (JL, 9237), 203 (JL, 9243); PUE1, no. 49; PUF1, no. 44; PUF2, no. 33, 34, 36, 37, 58, 67, 68; PUF9, no. 45 (*PL*, Eugene III, no. 555; JL, 9678); PUF1, Nach. Gott., no. 31 (JL, 8832); PUF7, Nach. Gott., no. 29; PUS1, no. 53 (JL, 8546), 54 (JL, 8928), 59, 61, 62; PUP, no. 41; PU in Piemont, no. 7 (*IP* 6/2, 215/12); PU in Pisa, no. 2 (*IP* 5, 61/204); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 369-70, no. 941 (JL, 9393); PU in Mailand, no. 9 (*IP* 7/1, 339/38; P-H *Iter*, 239; JL, 8749; the same, nearly, as *Antiquitates* 5, 259-60, *PL*, Innocent II, no. 158, col. 208-09, both from Innocent II); Nachträge zu den PU in Italiens 2, no. 9 (*IP* 3, 179/15; JL, 8497). For the papacy to 'correct the bad' in the *arengae*, see Appendix 1, no. 56, 243, 267 (also, in the context of the letters, no. 187, 260); to 'confirm things done rightly' or 'well,' see, Appendix 1, no. 1, 56, 225, 267 (also, no. 127, 149, 167,

'schism,' he seldom did so without reference to what might fairly be deemed worldly concerns. And otherwise, in nearly every case the pope wrote and acted solely in response to the petitions of visiting clerics brought before the curia.

Similarly, In a sense, papal participation in the launching and operations of the Second Crusade and its associated campaigns to the north or on the Iberian peninsula typified that paradigm or 'policy' which merged and in some ways confused spiritual with temporal welfare. Indeed, the crusade itself was a distinctly temporal, martial undertaking for the distinctly spiritual purpose of the relief of the Christian, especially Latin, Church in the East and elsewhere. Accordingly, the pope's role in these undertakings consisted primarily in extending both spiritual indulgences, including the remission of sins, to their faithful participants as well as the temporal protection of their persons and goods, including relief from financial debts.[1] Broadly, the limited series of papal letters regarding the operations and events leading up to, during, and following the crusade suggests, especially when put into the context of all extant papal output of the same years, that the pope and curia envisioned for themselves as minimal a role as possible in the actual initiation and conduct of all crusading 'policy' between the years, roughly, 1145 and 1149.

187, 252); to 'arrange the right,' see, Appendix 1, no. 1.

[1] The historiography on the papacy and the Second Crusade has been preoccupied with certain more or less specific questions, such as the origin of the crusade, as to whom should be ascribed initiative for the various enterprises, the papal or French court, or others. This has led to more specific questions about the sequence and timing of events leading up to the launching of the crusade, including the issuing of the papal crusading 'bulls,' King Louis VII of France's reception of those letters, his royal delegations to the curia, the meeting of his various crusading assemblies, and the leading crusaders' actual reception of the cross. Another question has concerned the scope of the crusade, whether it was devised originally as a grand three-front undertaking against the Moslems in the East and on the Iberian peninsula as well as against the pagans to the north. Another common question has concerned the papal attitude towards the role of King Conrad III and the Germans in the crusade. And lastly, there have been questions about the pope's subsequent role in the practical organisation of the movement, including its preaching, and the movements of his curia from the time that it left central Italy at the beginning of 1147—it would return about a year and a half later. See, H. Gleber, *Papst Eugen III.*, 35-102, esp. 35-62; M. Horn, *Studien*, 99-114; G. Constable, *Second Crusade*, 213-79; J.C. Rowe, *The Papacy and the Greeks* 1, 115-30; J.C.Rowe, *The Papacy and the Greeks* 2, 310-27; S. Runciman, *Crusades* 2, esp. 222-87. There are also two rather recent collections of articles on the Second Crusade: in *The Second Crusade and the Cistercians*, ed. M. Gevers (New York, 1992), see esp., J.G. Rowe, 'The Origins of the Second Crusade: Pope Eugenius III, Bernard of Clairvaux and Louis VII of France,' 79-89; G. Ferzoco, 'The Origins of the Second Crusade,' 91-99; see also, Y. Katzir, 'The Second Crusade and the Redefinition of *Ecclesia, Christianitas* and Papal Coercive Power,' 3-11; K. Hans-Dietrich, 'Crusade Eschatology as Seen by St. Bernard in the Years 1146 to 1148,' 35-47; B.M. Bolton, 'The Cistercians and the Aftermath of the Second Crusade,' 131-40. In *The Second Crusade: Scope and Consequences*, ed. J. Phillips and M. Hoch (Manchester, 2001), see esp., J. Phillips, 'Papacy, Empire, and the Second Crusade,' 15-31; R. Hiestand, 'The Papacy and the Second Crusade,' 32-53; see also, S.B. Edgington, 'Albert of Aachen, St. Bernard and the Second Crusade,' 54-69; N. Jaspert, '*Capta est Dertosa, clavis Christianorum*: Tortosa and the Crusades,' 90-110; K.V. Jensen, 'Denmark and the Second Crusade: The Formation of a Crusader State?,' 164-79; M. Hoch, 'The Price of Failure: The Second Crusade as a Turning-point in the History of the Latin East?,' 180-200. See also, A. Forey, 'The Second Crusade: Scope and Objectives,' *Durham University Journal* 86 (1994), 165-75; F. Lolter, 'The Crusading Idea and the Conquest of the Region East of the Elbe,' *Medieval Frontier Societies*, ed. R. Bartlett and A. Mackay (Oxford, 1989), 267-306; D.J. Smith, 'The Abbot-Crusader: Nicholas Breakspear in Catalonia,' *Adrian IV, the English Pope (1154-1159): Studies and Texts*, ed. B. Bolton and A.J. Duggan (Ashgate, 2003), 29-39.

Rather, as a matter of course, even while the curia resided beyond the Alps, curial practice remained very much business as usual: the pattern of adjudicating clerical controversies, and of confirming or protecting clerical possessions, or handling other temporal or policing cases, did not in any way diminish; rather, given the increased accessibility of the curia to potential transalpine petitioners, this only increased. This was borne out in the papal letters and privileges *in toto*. Accordingly, the papal letters concerning directly spiritual matters, especially with regard to the crusade, continued to remain exceptional.[1]

In general, it is the opinion here that, despite traditional assumptions regarding Eugene III's active and direct role in the Second Crusade, the papal sources have presented a picture of a papacy whose actual role in the undertaking and its various campaigns was, if not reluctant, at least of a basically auxiliary nature.[2] To be sure, according to the complete papal record of the period 1143-53, numerous letters showed a general papal interest in the crusader church and orders and, in isolated instances, also in the kings of Outremer and even individual crusaders.[3] But what must

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[1] Only two papal letters regarding the crusade were strictly 'spiritual' in nature and concerned designs for the unification of the Church of Constantinople with Rome in the course of the campaign to the East. Both letters were from 1147 and were addressed to Bishop Henry of Olomouc, who was originally intended to accompany the German king to the Holy Land. Within months, however, of instructing the bishop to see that Conrad III attend to the reunification in the course of his campaign, the pope, upon learning of the bishop's own designs to undertake instead a campaign, along with the Moravian dukes, against the 'Slavs and other pagans dwelling to the north,' abruptly abandoned the 'policy' altogether—which he admitted was highly improbable in any event—and without any apparent note of discomfiture: *PL*, Eugene III, no. 204, 214 (JL, 9110, for the date). The matter did not appear again anywhere in the papal record; and when the Greeks were mentioned again in the papal record, in the Treaty of Constance of 1153, they appeared only as potential military enemies of the papacy. Cf., Odo of Deuil, *De profectione*, 68-70, 78; I.S. Robinson, *Papacy*, 361-62; S. Runciman, *Eastern Schism*, esp. 124-28, and S. Runciman, *Crusades* 2, esp. 247-57, who made no mention of Eugene's aspirations for a reunion of the Greek Church.

[2] R. Hiestand, *The Papacy and the Second Crusade*, 32-53, has come closest to sharing the views presented here.

[3] See, for Celestine II and Lucius II: *PL*, Celestine II, no. 28 (*RRH*, no. 221; JL, 8481), 29 (*RRH*, no. 222; JL, 8482); *PL*, Lucius II, no. 26, 36, 56, 57, 84; JL, 8572a, 8689, 8699 (*laudatum* in a bull of Clement IV); PUTJ1, no. 8 (JL, 8478), 9 (see, PUTJ1, no. 8); *EPRI*, no. 187 (JL, 8547); PUKHL, no. 50 (*RRH*, no. 214; JL, 8472a), 51, 58 (*PL*, Lucius II, no. 88; JL, 8700); PU in Malta, no. 2 (see, PUTJ1, no. 8). For Eugene III through 1146: *PL*, Eugene III, no. 48 (Otto of Freising, *Gesta*, 71-73; JL, 8796), 89 (JL, 8876; see, *PL*, Eugene III, no. 48 [Otto of Freising, *Gesta*, 71-73; JL, 8796]), 114, 135; JL, 8821 (see, PUTJ1, no. 8); *APRI* 1, no. 201 (JL, 8829); *APRI* 3, no. 82 (*PL*, Eugene III, no. 141; JL, 8975); *EPRI*, no. 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959); PUTJ1, no. 10, 11 (see, PUTJ1, no. 8); PUKHL, no. 63 (PU in Malta, no. 3); PUS2, no. 57; PU in Sizilien, no. 3 (see, PUTJ1, no. 8); PUF4, Nach. Gott., no. 22. For Eugene III 1147-8 July 1148: *PL*, Eugene III, no. 166, 169, 204, 214, 229, 245, 272, 296, 307; JL, 9193; *IP* 6/2, 119/6; *EPRI*, no. 201 (JL, 9164); Archives de l'Orient latin 2, 253, no. 1 (JL, 9165), 253-54, no. 2 (JL, 9166), 255, no. 4 (JL, 9241); PUTJ2, no. 5. For Eugene III after 8 July 1148, including undated letters: *PL*, Eugene III, no. 341, 354 (Otto of Freising, *Gesta*, 106-08; JL, 9344), 355, 356, 357, 360, 367, 382 , 390, 516 (PUS1, no. 70 [9/24/53-54]: 'Der Text wiederholt das Breve Eugens III. vom 22. Juni 1152 JL. 9594 [*PL*, Eugene III, no. 516];' JL, 9594), 527; JL, 9291a, 9383 (see, PUTJ1, no. 8), 9505a, 9569a; *IP* 4, 71/27; *IP* 8, 45/171; PUF7, no. 70 (PUTJ1, no. 14; JL, 9438); PUTJ1, no. 13, 15, 17, 18; PUS2, no. 62. See also, for privileges of protection for churches in Outremer: *PL*, Celestine II, no. 26 (PUKHL, no. 52; *RRH*, no. 220; JL, 8479); *PL*, Lucius II, no. 63 (PUKHL, no. 55; *RRH*, no. 225; JL, 8652); *PL*, Eugene III, no. 122 (PUKHL, no. 62; *RRH*, no. 241; JL, 8939), 300 (PUKHL, no. 64; *RRH*, no. 249; JL, 9260); APRI 3, no. 66 (JL, 8748); PUTJ2, no. 7; PUKHL, no. 61 (JL, 8915), 65 (JL, 9469); Über die PU für S. Maria de Valle Josaphat, no. 5 (PUKHL, no. 66).

be emphasised here is that in most of these cases, perhaps with the exception of the Hospitallers and especially the Templars,[1] the pope extended his favour and support basically as he did for all who 'justly' brought business to the curia, through the basic papal system of petition. No more than twenty-eight of these letters,[2] furthermore, as well as only three privileges of protection,[3] occurred during the primary crusading years from December 1145 through 1149. Overall, in fact, very few extant papal letters of the period in fact concerned the actual organisation or operations of the Second Crusade and other various 'crusading' movements[4]—foremost among these were the four extant papal crusade privileges.[5]

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[1] See, ch. 2.2.

[2] *PL*, Eugene III, no. 48 (Otto of Freising, *Gesta*, 71-73; JL, 8796), 89 (JL, 8876; see, *PL*, Eugene III, no. 48 [Otto of Freising, *Gesta*, 71-73; JL, 8796]), 114, 135, 166, 169, 204, 214, 229, 245, 272, 296, 307; JL, 8821 (see, PUTJ1, no. 8), 9193; *IP* 6/2, 119/6; *APRI* 1, no. 201 (JL, 8829); *APRI* 3, no. 82 (*PL*, Eugene III, no. 141; JL, 8975); *EPRI*, no. 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959); *EPRI*, no. 201 (JL, 9164); PUTJ1, no. 11 (see, PUTJ1, no. 8); PUTJ2, no. 5; PUKHL, no. 63 (PU in Malta, no. 3); PUS2, no. 57; PU in Sizilien, no. 3 (see, PUTJ1, no. 8); Archives de l'Orient latin 2, 253, no. 1 (JL, 9165), 253-54, no. 2 (JL, 9166), 255, no. 4 (JL, 9241).

[3] *PL*, Eugene III, no. 122 (PUKHL, no. 62; *RRH*, no. 241; JL, 8939), 300 (PUKHL, no. 64; *RRH*, no. 249; JL, 9260); PUKHL, no. 61 (JL, 8915).

[4] For extant papal letters which demonstrated a direct papal interest in the crusade, beyond the four extant papal crusade privileges, and the two letters concerning the Slavic campaign discussed above sent to the bishop of Olomouc, two other marginally relevant letters were sent to the same bishop concerning the Baltic front of Christendom: *PL*, Eugene III, no. 319, 341. Two further letters only vaguely concerned the Iberian 'crusade:' *PL*, Eugene III, no. 296; *EPRI*, no. 187 (JL, 8547); see also, PUS1, 53 (JL, 8546). Two other letters concerned plans—perhaps initiated by Roger II of Sicily and Louis VII of France, and advocated by the abbots Bernard of Clairvaux, Suger of St. Denis, and Peter of Cluny, as well as possibly the cardinal-bishop Theodwin of S. Rufina/Porto—for a renewed campaign in the aftermath of the debacle in the East, perhaps partly against the Greeks themselves, whose perfidy many blamed for the failure of the Second Crusade. In both letters, from April and June 1150, addressed to the former French regent, Abbot Suger, the pope conceded his very reluctant consent, but the entire enterprise, nonetheless, failed to get off of the ground: *PL*, Eugene III, no. 382, 390; on this, see also, Bernard of Clairvaux, *Letters*, no. 256 (B.S. James, no. 399); *HP*, 51, 58-65; Otto of Freising, *Gesta*, 54-69; John Kinnamos, *Deeds of John and Manuel Comnenus*, 71-72; *Annales Casinenses*, 310; Romuald of Salerno, *Chronicon*, 230; Wibald, no. 147, 214, 215, 216, 347 (*Constitutiones*, 188-89, no. 134; *IP* 1, 180/9); *IP* 8, *44/169-70, *45/171-74; *IP* 10, *243/1; G. Constable, 'The Crusading Project of 1150,' *Montjoie: Studies in Crusade History in Honour of Hans Ebehard Mayer*, ed. B.Z. Kedar, J. Riley-Smith, and R. Hiestand (Aldershot, 1997), 67-75; T. Reuter, 'The "Non-Crusade" of 1149-50,' *The Second Crusade: Scope and Consequences*, ed. J. Phillips and M. Hoch (Manchester, 2001), 150-63; S. Runciman, *Crusades* 2, 285-87. Another letter was addressed to Conrad III in June 1149, shortly after Conrad's return to Germany, consoling him on his losses and proposing future talks over the status of their respective realms: *PL*, Eugene III, no. 354 (Otto of Freising, *Gesta*, 106-08; JL, 9344). Five other letters concerned the pope's special care for the German regency; none of these letters, however, actually concerned the crusade or its operations: *PL*, Eugene III, no. 245, 271,272, 359, 367. Similarly, at least four letters concerned the pope's crusade regency of the French kingdom: *PL*, Eugene III, no. 229, 355, 356, 357. The official papal biography of Eugene III, written by Cardinal Boso, would write that, to the wishes of King Louis VII of France, the pope 'received the kingdom into his hands and power:' *LP*, 387. In the final letter to Abbot Suger of St. Denis, reporting the news that King Louis was returning home through the court of Roger II of Sicily, it was significant that Eugene directly recognised Roger as 'king.' *PL*, Eugene III, no. 357 (JL, 9347, for the date). Otherwise, two remaining extant letters demonstrated a more or less direct papal interest in the crusade movement: *PL*, Eugene III, no. 135; *EPRI*, no. 199 (*Decretales*, Gregory, IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959).

[5] The original privilege was addressed to the French nobility at the beginning of December 1145 and repeated three months later (*PL*, Eugene III, no. 48 [Otto of Freising, *Gesta*, 71-73; JL, 8796], 89 [JL, 8876; see, *PL*, Eugene III, no. 48]). A very similar privilege was issued to the Italians in early October 1146 (PUKHL, no. 63 [PU in Malta, no. 3]). And a less similar privilege was issued in mid-April 1147 for those who had chosen

To put this into perspective, of the more than 800 papal documents surviving from the period between early 1145 and the curia's return to Italy in the early summer of 1148, only a handful—no more than two dozen—directly or indirectly concerned the various crusading movements and campaigns of the same period. This relative paucity of such letters, for events of such moment in the general history of the mid-twelfth century, has not hitherto been emphasised. The deduction here, accordingly, is that if Eugene III had been able to abide safely in Rome it is exceedingly difficult to conclude that he would have ever crossed the Alps in support of the crusading operations. Rather, in the complete context of a papal 'policy' in the period, it was far more probable that the curia quit the Patrimony for France as an act of frustration or even contrition in the aftermath of its series of unsuccessful, though bloody, campaigns against the Romans. In fact, the pope issued his initial crusading encyclical from Vetralla, in the papal Patrimony, in exile from the aggression of the Roman commune and in the course of a papal siege of the City. At the same time, the encyclical itself was dispatched only after eastern embassies had visited and supplicated the pope at a moment of acute crisis for Outremer, after the fall of Edessa—that is, in response to petition. This was perhaps why the primary contemporary narrators for the events leading up to the actual launching of the crusade, especially Otto of Freising and Odo of Deuil, de-emphasised Eugene's own immediate role—even Eugene's own official biographer and curial, Cardinal Boso, wrote in his *vita* of the same pope that the crusade had been 'called' by the French king.[1] Similarly, the actual preaching of the crusade was delegated entirely to Bernard of Clairvaux and his Cistercian brethren.[2] The decision to cross the Alps came a year later, after the unsuccessful outcome of war with the Romans.

To be sure, the mid-twelfth-century role of the papacy in the crusading movement prior to 1147 was neither entirely disinterested nor unoriginal[3]—although the pope sedulously referred to the example if not the obligation established by Urban II with regard to the First Crusade in prompting the issuing of the various crusading privileges and in defining their nature. But Eugene III's was by no means a leading role. Rather, the pope appears to have been satisfied with merely extending his endorsement to campaigns undertaken independently by others and issuing broad privileges in support, along with promises of protection and the remission of sins. Other

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not to advance towards Jerusalem but instead to march with the armies to the north to convert the Slavs (*PL*, Eugene III, no. 166). Beyond these, there was an additional summons or privilege issued much later, in late June 1152, for all of those willing to accompany Count Raymond Berenguer IV of Barcelona against the Iberian Moslems (*PL*, Eugene III, no. 516 [PUS1, no. 70 (9/24/53-54): 'Der Text wiederholt das Breve Eugens III. vom 22. Juni 1152 JL. 9594 (*PL*, Eugene III, no. 516)];' JL, 9594).

[1] *LP*, 387.

[2] See, Otto of Freising, *Gesta*, 70-71, on the crusade in general, see, 63-81, 101-08; Otto of Freising, *Two Cities*, Bk. 7. XXX, XXXII-XXXIII. 330-35; Odo of Deuil, *De profectione*, 6-10, 58, 94, 82; *De consideratione*, Bk. 2. I. 1-4 (47-52); Bernard of Clairvaux, *Letters*, no. 245, 247 (B.S. James, no. 321, 323).

[3] It has been thought that Eugene's crusade privileges were the first official papal statements defining Urban II's original indulgence for the participants of the First Crusade as a plenary indulgence; see, I.S. Robinson, *Papacy*, 323, 338-47.

contributions occurred only after the curia had abandoned its primary 'policy' of quelling the communal movement in Rome and securing its temporal position in the Patrimony. While abroad, the pope thus perhaps expanded his conception of his role in the entire movement, as suggested by his more specific instructions for those joining the Slavic expedition. For this expedition the pope also commended in the actual crusading privilege the bishop of Havelberg as a papal representative.[1] Likewise, Eugene commissioned two cardinal legates to the crusading armies for the principal campaign in the East, although only one extant papal letter—dated mid-July 1147 from Auxerre—was actually issued with regard to their legation in a brief commendation to the bishop of Olomouc:[2] no other extant letter was issued on their behalf; nor does any of the legates' own correspondence exist.[3] More importantly, once abroad, Eugene took an interest in his role as regent of the French and German kingdoms in the absence of their respective monarchs. This interest, however, was of distinct importance for the prestige of the papacy in light of the curia's own recent political failures in central Italy. The pope similarly used the opportunity to summon a general Church council at Reims (March 1148), whose canons nonetheless provided little in the way of original 'policy,' and which itself was occupied most conspicuously with the lodging or handling of numerous clerical controversies. Otherwise, papal business remained business as usual: that is, the fact of the curia's sojourn beyond the Alps did not materially affect the nature of papal practice.

Ultimately, however, it is possible that the failure of the eastern crusade, including the purported shortcomings of the cardinal legates to Outremer, adversely affected the prestige not only of Bernard of Clairvaux[4] but also of the papacy.[5] Indeed, it appears that there was a reduction in the numbers of petitioners reaching the curia in the years immediately following the crusade and the pope's return to Italy[6]—although so much business was conducted during the curia's French

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[1] *PL*, Eugene III, no. 166.

[2] *PL*, Eugene III, no. 204; on the cardinal legates to the crusade, see below, Appendix 2.

[3] Perhaps two or three French bishops—Geoffrey of Langres, Arnulf of Lisieux, and Alviso of Arras—who accompanied the principal French army may also have had some legatine status conferred upon them, but this is not suggested anywhere in the papal record; see, *HP*, 54-56, 62, 73-75, on the crusade in general, see, 11-12, 45, 52-62; *Anonymi vera narratio fundationis prioratus S. Barbarae in Algia, dioecesis Lexoviensis*, *Recueil des historiens des Gaules et de la France* 14, ed. M.J.J. Brial (Paris, 1877), 469-505, here at, 502; I.S. Robinson, *Papacy*, 155, 157, 161, 167, 322, 333, 350-51, 354-63; G. Constable, *Second Crusade*, 263-64; Arnulf of Lisieux, *Letters*, xxv-xxvii; R. Hiestand, *The Papacy and the Second Crusade*, 38.

[4] For Bernard of Clairvaux's self-apology vis-à-vis the failure of the crusade, see, *De consideratione* Bk. 2. I. 1-4 (47-52); for the apology of Otto of Freising, who saw it as a salubrious penitential exercise, see, Otto of Freising, *Gesta*, 103-06; see also, e.g., M. Gervers, *Donations to the Hospitallers*, 155-61; B.M. Bolton, *The Cistercians and the Aftermath of the Second Crusade*, esp. 131, 135.

[5] Cf., *HP*, 45; *De consideratione* Bk. 2. I. 1-4 (47-52); Otto of Freising, *Gesta*, 103-06.

[6] Given the many undatable documents, or lack of precise dates, of the period 1143-53, however, a comparison of the annual number of letters issued would prove far from reliable. Furthermore, given the propensity of certain houses to obtain renewals of privileges of protection under successive popes, there was bound to be a pattern of diminishing returns as Eugene III's long pontificate progressed, while many of those potential transalpine petitioners must have already availed themselves of the increased accessibility to the curia during its long sojourn outside of Italy—in fact, the proportion of extant letters and privileges of

sojourn that a pattern of a rate of diminishing petitions immediately upon returning to Italy should not at all seem surprising. At the same time, during the period between August 1148 and the end of 1149 the pope was immediately re-involved in a protracted war and siege against Rome itself. Indeed, the defeat of the crusading armies in the East only affirmed the pope's own original reluctance to throw himself wholeheartedly behind the movement; and once the curia did return to Italy it straightaway redoubled its efforts towards its original temporal 'policy' in the Patrimony, including an alliance with the perceived enemy of Christian interests in the East, Roger of Sicily.

2.6 CLERICAL CONTROVERSIAE *AND TEMPORALITIES IN THE PAPAL LETTERS*

Overall, of 1,050 extant papal letters of the period 1143-53 constituting here a data-base, at least 770 concerned in some manner clerical 'temporalities:'[1] indeed, most *controversiae* or suits involved temporalities in some form; while even jurisdictional disputes between clerics often simultaneously involved temporal possessions or dues. The terms or concepts of 'spiritualities' and 'temporalities,' however, can be problematic, and their distinction in fact in this period was ambiguous—in the twelfth century, a church or house's *spiritualia* could be classified as consisting of things of a 'temporal' nature in the more modern sense of that term, such as oblations and tithes.[2] Roughly, 'temporal' here is used in its modern sense; while only those letters with a direct reference to the ecclesiastical hierarchy vis-à-vis these categories are here classified under 'clerical temporalities.' And thus, those letters which concerned clerical disputes over, or merely confirmed, assigned, or otherwise concerned, 'churches' only broadly or in the abstract—that is, without direct reference to their own 'temporalities'—have been excepted, even though those too

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protection issued between the beginning of 1147 and July 1148 was remarkably high; cf., the chart above, in ch. 1.1; cf., also, R. Hiestand, *The Papacy and the Second Crusade*, 43, 46.

[1] For the following statistics, see, Appendix 3.

[2] While the categories themselves were commonplace enough, it was the definitions that proved vexing; and even the courts in the eleventh and twelfth centuries had difficulties in establishing the difference between spiritualities and temporalities; see, G. Constable, *Spiritualia*, 304-08; G. Constable, *Monastic Tithes*, 3-6, 83-98, 120-21; W.E. Lunt, *The Valuation of Norwich* (Oxford, 1926), 75-78. On the modern use of the term 'spirituality,' see, C.B. Bouchard, *Spirituality and Administration: The Role of the Bishop in Twelfth-Century Auxerre* (Cambridge, Mass., 1979), 14; A. Vauchez, *La spiritualité du moyen âge occidental, VIIIe-XIIe siècles* (Paris, 1975), 5. For purposes of classification here, 'clerical temporalities' have been designated for example as any material income or possession, movable or immovable, though not the buildings of churches *per se*, pertaining to clerics or religious. Thus, it would include any due or revenue source, landed property, or any matter of a material or pecuniary nature or value; violence done upon or by the clergy (according to Alexander of Hales, harassment was a 'temporal thing;' see, J.T. Noonan, *Bribes*, 210), and similarly the implication of the clergy in matters of despoliation, physical protection or defence, or coercion, as well as 'feudal' or military matters; as well as the curia's own political-temporal 'policy,' especially as it concerned the papal Patrimony and certain political-diplomatic affairs vis-à-vis the kings of Germany and Sicily.

would have invariably involved things of a 'temporal' nature.[1]

Otherwise, at least more than 500 letters, around half of all of the extant papal letters of the period 1143-53, concerned 'clerical *controversiae*.'[2] Yet, it should be added that numerous more *causae*, *controversiae*, or suits between laymen and, especially, between laymen and clerics could further be adduced. Indeed, causes *ratione personae* as opposed to cause *ratione materiae* had basically lost all distinction as far as the competence of the papal and its delegated courts were concerned.[3] For instance, as additional potential examples of suits, litigation, or grievances brought before the curia beyond those merely between clerics, more than 220 letters of the period concerned clerics despoiled by laymen. In any event, at least 104 of the 500 letters concerning clerical *controversiae* have been dated to the first two years of Eugene III's pontificate, a nearly identical quotient, in slightly less than two years, as that for the roughly sixteen months of Celestine II and Lucius II's pontificates. Nevertheless, the number should seem surprisingly large given the escalation in the rancour and violence between the curia and Roman commune immediately following Eugene's election: Eugene was straightaway compelled to leave the City itself and keep the curia in tour around the Patrimony. And as it was further reported that the commune had fulminated in a savage reaction against all travellers and pilgrims to Rome, with rumours of homicide committed against them,[4] it is somewhat astounding that as many cases or

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[1] And thus those letters concerning only burial rights or the blessing of altars, etc., have not been classified here under 'clerical temporalities,' except where the 'temporal' implication was obvious or explicit, even though they all could and largely did have financial or temporal significance. On the financial significance of ecclesiastical burial and its corresponding rights, see, G. Constable, *Spiritualia*, 314-15. In the eleventh century the term *spiritualia* referred narrowly to those payments or offerings associated with the sacerdotal functions—or the *altaria*, 'of which the distinction from the *ecclesia* (meaning the church buildings and landed property) dated back to the late tenth century.' G. Constable also stated that the motive of monks in acquiring churches were primarily economic, that 'churches and their incomes, whether they were owned by clerics, monks, or laymen, were a valuable form of property and an inevitable source of disputes;' while the 'endless search and rivalry' for oblations, tithes, and other revenues was associated with the acquisition of churches. To the 'new reformers,' 'the possession of churches and *spiritualia* tended inevitably to involve monks in secular affairs. The very machinery for collecting, transporting, and storing the *spiritualia* of a parish...promoted the acquisition of temporal property.' G. Constable, *Spiritualia*, 308, 311, 316, 328; see, T.A.M. Bishop, 'Monastic Granges in Yorkshire,' *English Historical Review* 51 (1936), 193-214, here at, 206. See also, J. Sayers, *Judges Delegate*, 183, who noted that, from Henry II of England's reign, 'advowson was classed as real property, that is as an immovable, and it was therefore subject to the jurisdiction of the temporal courts in England.'

[2] In the context of the developing culture of scientific jurisprudence and legal definition in the twelfth and thirteenth centuries, there is inevitably some uncertainty over that which should precisely constitute a legal 'suit' or 'controversy,' or 'litigation' proper, brought before the curia, as opposed to a *causa* generally, especially with regard to what might be construed purely as ecclesiastical policing functions, as in causes concerning clerics simply aggrieved by laymen, or by other clerics. As a result, for statistical purposes here, the most useful term and preferable classification is 'clerical controversies,' classified or defined as those *causae* concerning suits, disputes, or grievances—in a word, controversies—between clerics, who have here been treated as all members of the ecclesiastical hierarchy, including the religious, and regardless of whether the controversy was one, legally, of a 'criminal' or 'civil' nature.

[3] See, F.W. Maitland, *Canon Law*, 103; J. Sayers, *Judges Delegate*, xxiv, 165-68; R. Van Caenegem, *Evidence*, 300; R.L. Benson, *Bishop-Elect*, 46ff; G.B. Flahiff, *The Use of Prohibitions by Clerics against Ecclesiastical Courts in England* (Medieval Studies 3: Toronto, 1941), 107.

[4] See, ch. 6.2.

appeals should still have reached the curia, and testament to that waxing hunger for papal justice throughout western Christendom. At the same time, however, the number of cases being delegated to provincial judges did not apparently increase at all in that span.

Otherwise, from the beginning of 1147 until the Council of Cremona on 7 July 1148 only eighty-one letters appertained to clerical controversies, perhaps a smaller proportion than expected given the curia's recent accessibility to potentially disgruntled transalpine clerics. Nevertheless, that same question of propinquity might rather have helped to explain this relative dearth of letters, as the curia's potential ability to resolve causes or communicate more directly may have reduced the need to issue letters of justice, especially with regard to the processes of delegation. Indeed, the number of letters demonstrating or suggesting the employment or application of the judge delegate system positively plummeted for this period relative to other years.[1] Similarly, for the last half of the decade 1143-53 the percentage of letters concerning clerical *controversiae* reached a high-point, as the curia remained more or less in a state of vagabondage around the Roman District. All in all, however, one must be careful in drawing too fine distinctions, as despite fluctuations in percentages the overall numbers remained relatively static.

The caveat must also necessarily be added here that these numbers are based naturally only on the extant documents, as well as a small portion of extinct documents or causes referred to in extant ones. This is significant in that all ecclesiastical houses would have been naturally more solicitous about preserving those pertinent documents which concerned their litigation—or at least those documents representing cases decided in their favour or to their advantage—as well as their rights and possessions. As a result, some distortion in the proportions of the types or subject-matter of the papal documents which have come down to us is not entirely improbable.[2] Still, such documents as have come down to us remain as our only indication of the actual output of the chancery and other papal personnel, and they must be valued and scrutinised as such. And even if the chance survival of charter or documentary evidence can misrepresent the true proportionality of the concerns or subject-matter of the total documents produced at any time in the Middle Ages, nevertheless, the fact that these documents—of a temporal or litigious nature—were indeed those most commonly preserved, to the extent that they have come down to us eight-hundred and fifty years later, betrays in and of itself the priorities of the houses which preserved them. Indeed, testimony to Eugene III's own estimation of the distinguishing or pre-eminent functions and duties of his office could be found in an inscription he caused to be engraved upon the arc at Terracina in the Roman Campagna:[3] 'Pope Eugene III ordered to be made this work displaying the record of

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[1] See, ch. 5.1.

[2] Cf., J. Sayers, *Judges Delegate*, xxii-xxiii, also, 212; C.P. Schriber, *Arnulf of Lisieux*, 34.

[3] Mansi 21, 626, in his *Vita Eugenii*, gave: *Egregia de his memoria adhuc extat Tarracinae in arce in media turri, in pariete meridiem versus: his verbis...*; *IP* 2, 119/7: *Inscriptio in medio turre arcis Terracinae.*

the glory of him, who, endowed with extraordinary virtue of the soul...and honest zeal, restored to St. Peter much *regalia* long lost. He returned the vice of certain men to a standard of honesty. Lest [the judges] would seek anything from anyone, or lest they would accept anything from anyone before a cause would be decided, they were to receive modestly, moderately, and with acts of thanks anything offered after the decision.'[1]

Further sustained critical or opprobrious testimony was provided by the *De consideratione*, Bernard of Clairvaux's treatise dedicated and addressed to his own former pupil Eugene III on the failings and corruption of the practice of pope and curia in the mid-twelfth century and their concomitant worldliness. In fact, while most of the aspects of the debate over Bernard's ecclesiology as reflected through the *De consideratione* have proved controversial, yielding various and often antithetical interpretations, Bernard's views on the contemporary temporal preoccupations of the pope and clergy were relatively straightforward, though they have not been sufficiently emphasised. 'What is the point,' Bernard asked the pope, 'of wrangling and listening to litigants from morning to night? And would that the evil of the day were sufficient for it, but the nights are not even free. Your poor body scarcely gets the time which nature requires for rest before it must rise for further disputing. One day passes on litigation to the next, one night reveals malice to the next; so much so that you have no time to breathe, no time to rest and no time for leisure.' But Bernard also insinuated that the pope showed no inclination to reverse these trends. Rather, Eugene chose to pander to supplicants and litigants by assisting them 'in the acquisition of mere financial gain' and 'increasing the profits of avarice.' As a result, the pope was left no time to pray or to teach the people: 'When are we to build up the Church or meditate on the law? Oh yes, every day laws resound throughout the palace, but these are the laws of Justinian, not of the Lord. Is this just? Consider for a moment. Surely, the Law of the Lord is perfect, converting souls. But these are not so much laws as wrangling and sophistry, subverting judgement.'[2]

Suffice it to conclude here that Bernard's central concern or criticism of the papacy was that the papal and curial offices were devoting the lion's share of their time and energy to the handling of suits and other temporal affairs. And, as this thesis endeavours to bear out, Bernard's conclusion was soundly verified by the content of the documentary output of the papacy itself. What is difficult, however, is to conclude with Bernard that this state of affairs was a condition purely of papal neglect, and not a condition of the historical nature of a central ecclesiastical administration in the context of the culture of the mid-twelfth century. Rather, it is considerably more difficult to adjudge how the pope was positioned ca. 1150 to intervene *ex officio* directly in

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[1] Mansi 21, 626 (*APRI* 3, no. 112, which gives, Anno 1145-53; *IP* 2, 119/7, which gave, Anno 1150).
[2] *De consideratione*, Bk. 1. I. 1 (25), Bk. 1. II. 3 (28-29), Bk. 1. III. 4 (29), Bk. 1. IV. 5 (31-32), Bk. 1. X. 13 (43).

the 'spiritual' affairs and well-being of innumerable churches and monasteries, the great majority of which were located at extreme distances from the central office. Indeed, the primary fulcrum of papal primacy and authority in this period was the open road to Rome for all appellants and causes, not only the *causae maiores*. Litigants and petitioners across western Europe and beyond were bringing their causes and properties before the pope seeking his confirmation, his judgement, and his protection. In the end, by no later than the mid-twelfth century, the papacy was simply conceived as being better placed to dispose of so many of the myriad disputes turning around members of the ecclesiastical hierarchy, and to confirm and enforce their rights.

The members of that hierarchy, or their houses and offices, consisted in a Byzantine network of assorted rights and scattered, far-flung possessions which often came into conflict with one another. The situation was rendered all the more problematic given the primitive legal status of property rights. In this context, a simple, clear-cut papal primacy could cut across jurisdictional lines and through the labyrinth of personal and corporate assorted claims. Thus, in many ways, a papal concern for functioning jurisdictional levels of a pyramidal hierarchy was irrelevant, as long as the road to Rome remained wide open. But the fact that metropolitan or even diocesan authority might be spurned with regard to the justice it had to offer was not necessarily the direct effect of any papal 'policy,' but of the relative limitations of the episcopate in the provinces. Yet, in the end, papal primacy and delegation to the members of the episcopate went hand in hand, and the execution or enforcement of justice anyway, like the care of souls, remained invariably in the provinces. And while an arbiter or local ordinary tribunal might have offered a decision or settlement equally fair or legal, his sentence, composition, confirmation, or mandate was not backed by the same quality of weight and authority. Papal authority could and would be flouted, but perhaps this should be best seen in relative terms: that is, it was probably only flouted less than that of others. And while the papacy brought its prestige, authority, and powers of spiritual coercion to bear upon not only recalcitrants and offenders directly, it did so primarily in enlisting, commissioning, and mustering, often times in concert, all forms of local and national authorities, lay and ecclesiastical—papal primacy could cut through this social distinction equally.

For instance, in papal letters dated 8 and 9 January 1152 it was indicated that the German royal counsellor, Abbot Wibald of Stavelot and Corvey, had visited the curia. In a series of eleven separate letters all dated 9 January, the pope sent to the duke of Saxony, the archbishops of Bremen and Mainz, the bishops of Liège, Worms, Paderborn, Maastricht, Halberstadt, Verden, and Minden, as well as the abbot of Lüneburg, all on behalf of Wibald, ordering those personages to assist and defend Wibald in the recovery of the lost goods of Corvey.[1] In a long and complex series of causes between the monastery of Vézélay and the count of Nevers which spanned the

[1] *PL*, Eugene III, no. 467-77; Wibald, no. 354 (JL, 9521).

entire decade here under discussion, and eventually involved the complicity of the bishop of Dijon and his brother, the duke of Burgundy, with their own causes against Vézélay, the pope wrote variously to the bishop of Langres at least five times, the bishop of Dijon three times, the bishop of Auxerre twice, the archbishop of Sens once, and the bishops of Paris, Troyes, and Orléans each at least once; to the abbot of Vézélay and Bernard of Clairvaux at least twice, and Peter of Cluny and the abbots of St. Germain, Auxerre, Reigny, and Tournus each at least once. To the secular princes, the pope sent letters to the duke of Burgundy at least four times—initially as a champion of Vézélay—to King Louis three times, to the count of Nevers three times and his countess once, and to one Archimaldus de Burbono and another count, and also to all of the Burgundian *proceres*—sixteen counts, viscounts and other officers.[1]

In all, the long duration of the assorted but related causes gives indication as much of the difficulty which confronted the systems of papal justice as their success. But they provided also a poignant example of two distinct though largely irreconcilable twelfth-century phenomena: the aggrandisement and consolidation of the power of the Church as well as of the feudal princes, with a result of competition, strife, and, in terms of any papal 'policy,' a temporal imperative. Nevertheless, in intervals, when those princely interests did not directly run afoul of the Church's, there could be partnership, and the lay potentates could equally become agents of the pope. Nevertheless, the service which those 'faithful' could provide was very often in need against some other hawkish layman—this was reflected in the hundreds of letters of this period concerning clerics despoiled by laymen.[2] And this was as much true within the ecclesiastical hierarchy—this was reflected in the many letters concerning clerical controversies. All belonged to a culture of fierce competition and jealously: the Church was singularly wealthy; yet, under the prevailing cultural conditions, that wealth could not be laid up sanguinely in trust, leaving psychological repose for a strictly spiritual occupation.

As a result, while perhaps the 'popes could not do justice to all the mundane and often trivial bickering over ecclesiastical property which was brought before them,'[3] as C.R. Cheney noted, the record of the period 1143-53 indicates that they certainly made the effort—the curia was not opposed to taking up apparently all grades of disputes brought before it. It was precisely at this point, at this nexus of rampant clerical competition, that the churches' desire for and creation of a papal primacy becomes most intelligible. The clergy required a supreme judge and arbiter; it required legitimate titles to its manifold and abstruse networks of possessions and rights,

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[1] See, *PL*, Lucius II, no. 11, 47, 68; *PL*, Eugene III, no. 145-51, 274-75, 398-401, 422-25, 487-88, 514, 528, 531, 552, 557; JL, 8989.

[2] See, ch. 8.3.

[3] C.R. Cheney, *Innocent III and England*, 99. On Gregory VIII's reforms to stem the mass of petty or trivial suits coming to Rome, see, *PL*, Gregory VIII, no. 15, col. 1552-53 (JL, 16,056); also, 'Die Dekretalen Gregors VIII.,' ed. W. Holtzman, *Mitteilungen des Instituts für österreichischen Geschichtsforschung* 58 (1950), 113-23, here at, 114; I.S. Robinson, *Papacy*, 197; C.R. Cheney, *Becket*, 70-71.

especially in the context of a culture of ever-increasing litigiousness and legal complexity, combined with the clergy's involvement, often at the forefront, in the bustling new commercial-profit-money economy, as well as their regalian and other civil-military functions.[1] Little wonder then that legal training was becoming increasingly a prerequisite to promotion within the curia. And it was in this context and duty that the constant reiteration of the tenor and terms of the *arengae* of papal documents of this period, for the papal 'care,' 'solicitude,' or 'debt,' as they applied in practice, becomes most clear.[2]

But it must be continually stressed that the churches came to the pope basically only through their own impulses for his judgement, his protection, and his confirmation: again, papal jurisdiction was seldom if ever exercised *ex officio*;[3] papal administration was seldom directive. And more importantly in this sense, the papacy functioned primarily in this period not as ruler of the Church *per se*, but as its overseer, especially of the material or physical well-being of the churches. This was reflected most directly in the common usage of the image of the pope as 'set up in the watchtower (*specula*) of the Church.'[4] And even though the pope in this period was involved in the affairs of churches over a vast geographical area, and even though variously at one time or another he was involved in most aspects of Church administration, he had no regular role in the basic governance or ministry of the parishes or dioceses of the Church. Furthermore, even though the pope did intervene in the affairs of the most minor churches or houses, he did so, again, invariably in response to an appeal or even first-instance suit, or otherwise in response to a petition for confirmation. In other words, the more significant fact was that even the most minor churches were travelling to 'Rome' bringing with them their relatively petty business, rather than the fact that the pope himself became involved in that business.

In sum, in watching over the Church the pope in the period 1143-53 watched over its clerical hierarchy as arbiter and judge, and as the pre-eminent deeding office of the clergy; in

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[1] Cf., J. Gilchrist, *Economic Activity*, 39-47.

[2] See, ch. 1.1.

[3] According to J. Sayers, episcopal jurisdiction could be roughly divided 'into instance jurisdiction, where the cases were brought by the parties, and *ex officio* jurisdiction, covering cases of correction initiated by or on behalf of the bishop. The *ex officio* jurisdiction naturally enough remained with the bishop and his subordinates, and was not affected by the other growing jurisdictions. Indeed, with the administrative advances of the twelfth century, this type of jurisdiction presumably expanded. With instance jurisdiction, it seems that, as the twelfth century progressed, more provision was made for judicial decision, at least if we are to judge by the appearance of the bishop's legal official in the 1150s to 1160s and the growth of a caucus of legal men, the *magistri*, round the bishop. But the real development was that by the end of the century the accusing party had more choice as to where he might take his case.' J. Sayers, *Judges Delegate*, xxiv.

[4] At least six different *arenga* statements of the period 1143-53 defined the papacy with the metaphor of the 'watchtower,' or *specula*: Appendix 1, no. 74-77; see also, *PL*, Eugene III, no. 371, where the same statement appeared towards the end of the letter. See also, e.g., Appendix 1, no. 1, 56, 225, 241, 242, 243, 244, 267. Cf., *De consideratione*, Bk. 2. VI. 9-11 (56-59), Bk. 2. VI. 13 (62- 63).

particular he was called to their aid as protector, especially of clerical goods.[1] Thus, at the beginning of 1152 Eugene wrote to the bishop of Halberstadt: 'The authority of the governance which we have received admonishes us to be the most ready defenders of ecclesiastical property and to place the securest wall of protection against those who might endeavour to pillage them.'[2] A great many of the papal letters of this period, furthermore, were mere confirmations or 'fortifications' of various forms—beyond the privileges of protection which were in effect comprehensive confirmations—confirming for instance judicial decisions, settlements, possessions, acquisitions of possessions, 'churches,' or simply 'works.' Many of these operated in effect as title-deeds. Moreover, when a papal letter confirmed a church or other temporalities it invariably did so as a confirmation of an episcopal act. As such, numerous *arengae* specifically announced that it was the especial papal duty to provide papal 'firmness,' 'strength,' and 'fortitude' for those things which had been brought about 'rationally' or 'providently' by 'our brother bishops,' especially those things brought about for the 'quiet and utility' of the religious, including judicial sentences, 'so that they might be observed firmly for all time,' and not disturbed by the ill-designs—*refragatio*—of the wicked.[3] The papacy also perceived itself as having a special duty to watch over, protect, and provide for not only the religious, but the pope's 'brother bishops.'[4] Thus, for instance, the *arengae* declared: 'Reason persuades and the debt of fraternal charity compels us to minister kind relief for all, and chiefly for our brother bishops.'[5] 'The authority of our office demands that we provide for the quiet of our brother bishops with diligent zeal and oppose the solidity of the apostolic rock against their disturbers.[6]

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[1] For clerical temporalities, for the *arengae*, see, e.g., the especial and consistent papal concern to militate against the *refragatio*, or *molestiae*, incursions,' etc., of the 'wicked:' Appendix 1, no. 4, 28, 29, 30, 38, 45, 49, 52, 53, 61, 72, 82, 83, 84, 85, 86, 90, 137, 138, 139, 140, 141, 157, 161, 166, 172, 174, 175, 176, 177, 179, 180, 183, 185, 252, 253, 281, 289, 290. See also, for the papal concern for clerics despoiled by laymen: Appendix 1, no. 3, 7, 8, 15, 18, 23, 26, 31, 33, 37, 42, 46, 47, 48, 50, 51, 54, 55, 62, 63, 67, 68, 70, 78, 79, 80, 81, 87, 88, 89, 93, 131, 156, 159, 164, 169, 170, 186, 187, 190, 206, 212, 217, 218, 219, 228, 248, 255, 258, 265, 276, 277, 279, 282, 283, 284, 285, 286, 287, 288, 291, 292.

[2] Appendix 1, no. 90 (*PL*, Eugene III, no. 472); see similarly, e.g., Appendix 1, no. 79-89. The legate and cardinal-bishop of Ostia, Guido de Summa, also wrote to the consuls of Piacenza in 1151: 'The offerings of the faithful, just as authority attests, are the redemption of sins and the patrimony of the poor and should pertain specially to the disposition of them who have been given up to the cult of the divine house.' Appendix 1, no. 80 (Nachträge zu den PU in Italiens 5, no.10 [*IP* 5, 477/26]).

[3] See, Appendix 1, no. 50, 51, 158, 165, 166, 167, 168, 169, 171, 172, 173, 174, 175, 176, 177, 178, 179, 182, 183, 184, 185, 249, 256.

[4] See, Appendix 1, no. 3, 11, 12, 17, 21, 38, 39, 40, 45, 48, 50, 51, 56, 61, 62, 65, 67, 71, 78, 80, 93, 105, 106, 107, 158, 159, 160, 162, 163, 164, 165, 166, 167, 169, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 208, 220, 233, 234, 235, 236, 237, 238, 239, 240, 243, 249, 250, 252, 256, 258, 261, 263, 276, 282, 286, 293; see also, in the context of the letters, Appendix 1, no. 22, 25, 42, 43, 54, 64, 84, 91, 132, 133, 134, 136, 137, 138, 139, 140, 141, 149, 150, 154, 155, 187, 209, 211, 212, 213, 215, 221, 279, 281, 283.

[5] Appendix 1, no. 159 (*PL*, Eugene III, no. 565).

[6] Appendix 1, no. 164 (PUF3, Nach. Gott., no. 6); see similarly, e.g., Appendix 1, no. 17 (PUP, no. 46), 160 (*PL*, Eugene III, no. 566), 158 (*PL*, Eugene III, no. 565), 162 (PUS1, no. 59), 166 (*PL*, Eugene III, no. 175), 171 (PUF2, no. 69), 181 (PUE2, no. 43), 208 (*PL*, Eugene III, no. 174), 256 (PUE1, no. 45).

In all of these cases, as with papal privileges of protection, papal authority provided churches, prelates, and religious with a universal and universally and legally recognised source of authenticated titles to churches and other temporalities, legitimising and proving various deals and transactions, sales, donations, concessions, and restitutions, as well as existing possessions. General competition and rapacity, as well as the problems and difficulties involved with the enforcement of sentences and settlements, commonly led parties to seek some verification of their business at the curia.[1] Many *arengae* in fact directly expounded the value of putting down acts in writing.[2] But it has seldom been sufficiently emphasised to what extent the business of the curia as far as the chancery became involved was conducted almost purely as a responsive or reactive office which simply re-allocated that business.[3] Accordingly, the dearth of purely 'spiritual' business reflected in the letters was basically the result of the fact that few petitioners found need to bring their spiritual business before the curia. And indeed, even the 'spiritual' business of the curia as it did exist was conducted almost solely in response to petition, often times simply in the form of a confirmation. And despite evidence of failures and resistance, it must be concluded on the basis of incomplete evidence that the system operated by and large efficiently. Indeed, throughout the twelfth century more and more people brought their questions, complaints, business, and problems of personal defence to the curia; and the open road to Rome remained as the crux of its primacy and government, which were, in this sense, a creation of the outlying churches.[4]

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[1] See, C.R. Cheney, *Innocent III and England*, 113-14.

[2] See, e.g., Appendix 1, no. 65, 66, 69, 70, 72, 146, 165, 167, 170, 173, 174, 176, 177, 182, 184, 242, 249, 252, 254, 256.

[3] C.R. Cheney was correct when he emphasised that in its current system, 'the pope gave the boon of his sentence when it was requested, and because it was requested. Except in matters affecting his prerogative he only adjudicated in response to a petition.' C.R. Cheney, *Innocent III and England*, 99.

[4] See, e.g., R.W. Southern, *Western Society and the Church*, 109, 119; G. Barraclough, *The Medieval Papacy* (Norwich, 1968), 104; W. Ullmann, *Short History of the Papacy*, 181; J. Sayers, *Judges Delegate*, 165; I.S. Robinson, *Papacy*, 183.

3 *PAPAL JUSTICE*

R.W. Southern wrote that it was in the decade around 1140 to 1150 that papal jurisdiction 'emerged as a perceptible fact in everyday European life.' In this decade, that jurisdiction was first seen penetrating 'the lowest strata of the ecclesiastical structure as a matter of ordinary routine.' Litigation at the papal court, he observed, 'became an obsessive feature of the religious life, and it is written all over the records of every important religious community.'[1] By the end of the century, in fact, legal business so preoccupied the life of the clergy that the Parisian theologian Robert Courson considered it helpful to include in his *summa* a brief *ordo iudicarius* for the benefit of all ecclesiastics.[2] All of this is clearly borne out in the papal record of the period 1143-53, one of a purported triumph and ascendancy of a 'new reform' party in the curia, whose crowning achievement, it has been thought, was the elevation to the Sacred Chair of a protégé of Bernard of Clairvaux, the movement's leading exponent, in the person of the first Cistercian pope, Eugene III.[3] Yet, it has similarly been thought to have been a basic part of the new reformers' agenda not to litigate:[4] such a concern itself was central to Bernard's own manual for virtuous papal rulership, the *De consideratione*; while even Peter Abelard, Bernard's rival, criticised monks for usurping clerical property and parochial revenues, and for daily going to public lawsuits.[5] Nevertheless, what is clear is that by the mid-twelfth century the conduct of litigation and controversies took up a sizable portion of the occupation of all clerics and, by consequence, the papal curia. Indeed, even in the course of the Council of Reims from the end of March 1148 the curia was occupied with the cases of several clerical controversies,[6] even beyond those metropolitan-primatial claims put forward during the actual proceedings of the council,[7] or the 'consistory' which examined the controversy of Gilbert de la Porrée.[8] Likewise, the Roman

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[1] R.W. Southern, *Western Society and the Church*, 115, 117.

[2] J.W. Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter and His Circle* (Princeton, 1970), 186.

[3] See, e.g., S. Chodorow, *Gratian*, esp. 50-51. E. Vacandard, while identifying Bernard of Clairvaux himself and the *De consideratione* as soundly anti-Gregorian, seems to have considered Eugene III generally as a Gregorian; see E. Vacandard, *Vie de Saint Bernard* 2, 450-91; E. Kennan, *Traditio* 23, esp. 84-86; cf. H.V. White, *Gregorian Ideal*, 321-48.

[4] See, G. Constable, *Spiritualia*, 328-29.

[5] Peter Abelard, *Sermones ad virgines Paraclitenses in oratorio eius constitutas*, *PL* 178, no. 33, col. 582-607, here at, col. 588; see, L. Little, *Religious Poverty*, 30; K.W. Nörr, *Jurisprudence*, 331.

[6] See, *PL*, Eugene III, no. 280, 281, 288, 289, 292; JL, 9201; *EPRI*, no. 202 (JL, 9237); PUF2, no. 57, 58; PUF5, no. 76; PUF6, no. 62; PUF7, Nach. Gott., no. 35; PUP, no. 46; Archives de l'Orient latin 2, 255, no. 4 (JL, 9241); see also, N. Häring, *Notes*, 44.

[7] See, ch. 2.2.

[8] See, ch. 1.3 and 2.1.

Church itself around mid-century purported to be the foremost fount of justice; and accordingly it was largely in this realm that it consistently made its authority felt by those in the provinces.[1]

The papacy's function of administering justice was also recognised in the papal rhetoric, as numerous *arengae* to the papal letters may be construed as having related to or reflected broadly the papal or ecclesiastical judicial office,[2] often in the need or concern to suppress 'scandals,' 'controversies,' and 'disputes.' This could be expressed simply, as in two *arengae* prescribing the Golden Rule.[3] Or it could be construed as a principal function of the papacy as the fount of charity, or *caritas*, which functioned principally 'to cultivate concords, preserve compositions, unite the divided, set aright evil things and strengthen the remaining virtues of perfection with its own fortification.'[4] Ultimately, it was the pope's duty, as overseer of God's Church, and perched in its 'watchtower (*specula*),' to maintain its peace, as God's will. Thus, in April 1149 the pope wrote: 'Since without peace and fraternal accord no placating sacrifice is offered to Omnipotent God, it is our inherent care to terminate through a judgement or concord controversies which might emerge, with sins bursting forth, between the sons of the holy Church.'[5] And thus, and not without a ring of irony, the curia declared earlier in November 1147: 'Understanding that it is not advantageous that the servants of God litigate, from the office enjoined upon us we ought to put lawsuits and scandals out of the way, and provide for the peace and tranquillity of the churches with vigilant solicitude.'[6] But the clergy of God did often litigate in the world of the twelfth century, and the pope admitted even earlier in February 1146 that: 'It is the inherent duty of our office principally to remove out of the way the scandals of churches and salubriously provide for their peace and tranquillity;'[7] and later, in June 1152: 'for this we sit before others on the seat of justice through the arrangement of the Lord, so that, safeguarding for every church and

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[1] Cf. G. Silano, *Of Sleep*, 346-47, who pointed out that the bull of promulgation of Boniface VIII's official codification of canon law of 1298, the *Liber Sextus*, emphasised, borrowing from Justinian, the pope's duty to go sleepless for the sake of the justice and suits of his subjects.

[2] See broadly, e.g., Appendix 1, no. 4, 7, 11, 12, 17, 25, 29, 30, 37, 41, 42, 44, 56, 58, 59, 60, 65, 66, 69, 70, 72, 74, 75, 76, 77, 91, 98, 100, 101, 103, 104, 105, 106, 107, 110, 125, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 167, 168, 170, 172, 173, 174, 176, 177, 182, 184, 191, 204, 209, 210, 215, 220, 221, 222, 224, 225, 226, 227, 228, 229, 230, 231, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 264, 266, 267, 269, 276, 282, 297. On the prudence and necessity for maintaining written records, see, Appendix 1, no. 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 249, 251, 254, 256, 257, 261. On the obligation of obedience, see, Appendix 1, no. 4, 41, 60, 101, 168, 191, 204, 220, 221, 222, 224, 225, 226, 227, 228, 229, 230, 231, 235, 236, 237, 238, 239, 266, 276; see also, in the context of the letter, no. 25.

[3] 'The order of justice and reason demands that we ought never to inflict upon others that which we do not wish to endure from others.' Appendix 1, no. 103 (PUS1, no. 62). 'It is the especial good of charity that we esteem our sons just as ourselves, and by no means do to those that which we do not wish to happen to us.' Appendix 1, no. 104 (PU in Florenz, no. 11 [*IP* 3, 138/11]).

[4] Appendix 1, no. 243 (PUS1, no. 61).

[5] Appendix 1, no, 245 (Le bolle pontificie, Montecassino, no. 19 [*IP* 8, 180/256]).

[6] Appendix 1, no. 251 (*PL*, Eugene III, no. 239).

[7] Appendix 1, no. 258 (PUE3, no. 49).

ecclesiastical person their own justice, if any dissent should arise between them, we might terminate it with a due end.'[1]

The papacy also declared that it had a special obligation towards, or care for, the religious. In February1152 Eugene wrote to the archbishop of Canterbury: 'When their own justice is illicitly taken away from those who are intent upon divine servitude under a religious habit, such a greater care ought to press upon us, so that that which pertains to their rights they might at least recover through the intervention of a judgement, so that with their own vocation thus less hindered they might be able to fulfill their vows in their works.'[2] The case in question concerned the appropriation of the monks' churches by members of the neighbouring secular clergy. And in a much earlier letter, in February 1144, Celestine II wrote to the prior and brethren of the eremitic house of Camaldoli detailing the terms of his judgement over their longstanding controversy with the religious brethren of Vivo: 'From the administration of the apostolic see conceded to us by God we are compelled to put out of the way the scandals of religious brothers and provide for their peace and tranquillity with paternal solicitude.'[3] Indeed, as often as not, as in this case, the papacy's 'special' care for the religious and their houses manifested itself in the context of a mid-twelfth century culture of rampant clerical competition as much between the religious as not. And thus: 'When a controversy springs forth between religious persons concerning earthly possessions, it must be so terminated with priestly solicitude that the suit is not able to spring up again from habit.'[4] As something which many in the Church saw as an embarrassing and disquieting phenomenon, this competition was as yet a stark and inexorable reality. For the curia, it appears that the solution to the impediment imposed upon the proper or ideal monastic vocation by litigation and controversies was not in barring monks from the courts so much as expeditiously resolving those controversies.

3.2 THE NEW JURISPRUDENCE

It has been customarily said that the Middle Ages was a 'law-centred society.'[5] It is in fact a commonplace to speak of a rise of legalism in general, characterised chiefly by the development of the new scientific jurisprudence of canon and Roman Law, beginning with the eleventh-century reform movement, but especially from the middle decades of the twelfth century, with the two

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[1] Appendix 1, no. 260 (*PL*, Eugene III, no. 512); see similarly, e.g., Appendix 1, no. 246 (Nachträge zu den PU in Italiens 5, no. 8 [*IP* 5, 522/4]), 250 (PUP, no. 51), 262 (*PL*, Eugene III, no. 76).
[2] Appendix 1, no. 255 (PUE2, no. 69 [JL, 9546]).
[3] Appendix 1, 247 (Nachträge zu den PU in Italiens 2, no. 9 [*IP* 3, 179/15; JL, 8497]).
[4] Appendix 1, no. 259 (*PL*, Eugene III, no. 183).
[5] R.L. Benson, *Bishop-Elect*, 15.

probably complete and original recensions of 'Gratian's' profoundly important *Decretum*.[1] The century following their appearance witnessed a flowering in the study, development, and application of canon, and Roman, law, represented chiefly in the first generation or so by the work of 'Gratian's' successors—the decretists—followed by the work of the decretalists in the last quarter of the century and culminating in the *Decretales* of Gregory IX (1234)—an officially papally sanctioned compilation of old and especially newer canon law and papal 'legislation.' By the thirteenth century, this culture had so pervaded the curia that that period has been characterised by historians as the age of the 'lawyer-popes.' By the mid-thirteenth century the discipline of canon law itself 'had achieved a sophistication, a complexity and a level of technicality which would have seemed foreign to Gratian.'[2] Still, a century earlier, as Bernard of Clairvaux affirmed throughout the *De consideratione*, a culture of legalism and careerism had already begun to pervade the curia.

Indeed, as early as the pontificate of Urban II the curia had already begun to acquire legal advisers. And Cardinal Haimeric of S. Maria nuova (1123-41), a Burgundian and canon of S. Maria Rheno, Bologna, definitely established contact between the curia and Bolognese jurisprudence, so that by 1150 the papacy was at the threshold to the period in which lawyers overtook the religious in the curia, and some legal genius or expertise became increasingly a primary qualification for recruitment to and promotion within the cardinalate.[3] As a result, in 1178 Alexander III, recruited to the college by Eugene III, would request his cardinal legate in France to suggest suitable French candidates for the cardinalate. His recommendations fell into two classes of candidature: monks well known for sanctity and austerity; and lawyers (*magistri*).[4] In the span

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[1] On this, see esp., A. Winroth, Decretum. On the *Decretum* and the development of canon law and scientific jurisprudence, the literature is enormous; see, e.g., P. Fournier and G. Le Bras, *Histoire des collections canoniques en Occident depuis les Fausses décrétales jusqu'au Décret de Gratien* (Paris, 1931-); P. Fournier, 'Un tournant de l'histoire du droit (1060-1140),' *Nouvelle revue historique de droit français et étranger* 3/41 (1917), 129-80; G. Le Bras, 'Canon Law,' *Legacy of the Middle Ages*, ed. C.G. Crump and E.F. Jacob (Oxford, 1948), 321-61; E.H. Kantorowicz and W.W. Buckland, *Studies in the Glossators of the Roman Law: Newly Discovered Writings of the Twelfth Century* (Cambridge, 1938); F.W. Maitland, *Canon Law*; F.W. Maitland and F.P. Maitland, *The History of English Law before the Time of Edward I* 1 (Cambridge, 1898); Z.N. Brooke, *The English Church and the Papacy from the Conquest to the Reign of John* (Cambridge, 1931), 32-43; C. Duggan, *Twelfth-Century Decretal Collections and their Importance in English History* (London, 1963), 12-23; S. Chodorow, *Gratian*; K.W. Nörr, *Jurisprudence*; S. Kuttner, *Harmony from Dissonance: An Interpretation of Medieval Canon Law* (Wimmer Lecture 10: Latrobe, Penn., 1960); S. Kuttner, 'The Father of the Science of Canon Law,' *Jurist* 1 (1941), 2-19; S. Kuttner, 'The Revival of Jurisprudence,' *Renaissance and Renewal in the Twelfth Century*, ed. R.L. Benson and G. Constable, with C.D. Lanham (Cambridge, Mass., 1982), 299-323; the basic work for the canon law after the *Decretum* is S. Kuttner, *Repertorium der Kanonistik (1140-1234):* Prodromus corporis glossarum (Studi e testi [Biblioteca apostolica vaticana] 71: Vatican City, 1937-).

[2] A. Winroth, Decretum, 145.

[3] See, B. Zenker, *Mitglieder*, 142-44; K.W. Nörr, *Jurisprudence*, 330-31; I.S. Robinson, *Papacy*, 106-07, 220; P. Classen, *Zur Geschichte Papst Anastasius' IV.*, 38-39; W. Maleczek, *Papst und Kardinalskolleg*, 294-95; J. Sayers, *Judges Delegate*, 19.

[4] *Variorum epistolae ad Alexandrum III*, *PL* 200, no. 11, col. 1370-72; see, I.S. Robinson, *Papacy*, 54-55.

of his pontificate, Alexander would himself go on to promote at least six eminent lawyers to the college.[1] Similarly, it is now also known that 'Gratian's' *Decretum* was used in Alexander III's chancery, much earlier than had traditionally been thought.[2] The actual Gratian certainly wrote at least the first, and much shorter, of the two recensions of the *Decretum*; and it is even possible that he was consulted by Cardinal Goizo of S. Cecilia (1140-44) while judging a case in Venice in 1143, and thus in contact with the curia by the beginning of the period under consideration here.[3]

With these developments in mind, the terminology of jurisprudence also left early on a mark in the rhetoric of the chancery. To begin with, it has been stressed that the twelfth century, a period of 'renaissance,' witnessed a renewed process of rationalisation, and that this process was fundamental to the growth of scientific jurisprudence.[4] This terminology of 'reason' figured prominently in the papal *arengae* of the period 1143-53.[5] More concrete was the constant reoccurrence of the word *iustitia*.[6] Other technical legal terminology is, however, more instructive.

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[1] See, ch. 2.1.

[2] See, Decretales ineditae saeculi XII: *From the Papers of the Late Walther Holtzmann*, ed. and rev. S. Chodorow and C. Duggan (*Monumenta iuris canonici* B: *Corpus collectionum* 4: Vatican City, 1982), viii. While almost nothing is known of Gratian's life *per se*, there were dubious traditions which associated him as an acquaintance of the chancellor Cardinal Haimeric and as a counsellor to Innocent II, and even a legate *a latere* to Croatia in 1151 under Eugene III; see, S. Kuttner, *Jurist* 1, 2-19; J.T. Noonan, *Gratian Slept Here*, 145-72; S. Chodorow, *Gratian*, 47-53. Similarly, there exists a spurious *Kalendario* of the school of Bologna which intimately associated Eugene III with Gratian and the school of Bologna; see, *IP* 5, 268-70. For the most recent word on Gratian and the production, and stages of the production, and authorship of the *Decretum*, see, A. Winroth, Decretum.

[3] This was cited by A. Winroth, Decretum, 6, who cited *IP* 5, 60; but his reference was clearly erroneous. On the longstanding debate about the extent of Bernard of Clairvaux's knowledge of the law and his attitude to the new scientific jurisprudence, see, E. Kennan, *Traditio* 23, 106; S. Chodorow, *Gratian*, 260-65; J.A. Brundage, 'St. Bernard and the Jurists,' *The Second Crusade and the Cistercians*, ed. M. Gevers (New York, 1992), 25-33; W. Ullmann, *Growth*, 426-36; B. Jacqueline, 'Saint Bernard et le droit romain,' *Revue historique de droit français et étranger* 4/30 (1952), 223-28; B. Jacqueline, 'Yves de Chartres et saint Bernard,' *Études d'histoire du droit canonique dédiées à Gabriel Le Bras* 1 (Paris, 1965), 179-84; B. Jacqueline, *Bernard et l'expression* 'plenitudo potestatis,' 345-48; B. Jacqueline, 'Bernard et le schisme d'Anaclet II,' *Bernard de Clairvaux* (Commission d'histoire de l'Ordre de Cîteaux 3: Paris, 1953), 349-54; H.V. White, *Gregorian Ideal*, 321-48; H.V. White, *The Conflict of Papal Leadership Ideals from Gregory VII to Bernard of Clairvaux* (Dissertation: U. Michigan, 1956), cited by S. Chodorow, *Gratian*, 260-61; B.H.D. Hermesdorf, 'Bernardus van Clairvaux als jurist,' *Annalen voor Rechtsgeleerdheid en Staatswetenschappen* 13 (1953), 345-63; H. Bloch, *Glanfeuil Forgeries*, 169; the works of A. Fliche cited above.

[4] See, R. Van Caenegem, *Evidence*, 304; R.W. Southern, *Western Society and the Church*, 42.

[5] See, Appendix 1, no. 9, 24, 28, 41, 46, 47, 49, 51, 54, 55, 64, 74, 84, 103, 105, 118, 119, 120, 121, 122, 124, 129, 130, 139, 141, 152, 153, 155, 158, 159, 160, 165, 166, 167, 169, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 194, 206, 221, 222, 232, 233, 234, 235, 236, 237, 241, 242, 249, 252, 253, 256, 257, 265, 266, 272, 275, 277, 283, 294.

[6] For the *arengae* only, see, Appendix 1, no. 7, 37, 38, 39, 43, 70, 76, 89, 90, 95, 99, 103, 105, 123, 130, 131, 152, 153, 155, 160, 181, 208, 209, 211, 215, 217, 244, 246, 250, 260, 261, 272, 274, 287, 291. See also, for the papal duty to preserve *iustitia* for the churches and clergy, Appendix 1, no. 37, 38, 39, 43, 76, 95, 123, 181, 208, 209, 211, 217, 235, 244, 246, 261, 287, 291; or, for the duty to preserve the *iustitia* of the churches and clergy, see, no. 17, 38, 42, 44, 105, 160, 197, 207, 222, 233, 234, 237, 255, 260, 266, 291; or, similarly, for the duty to preserve the *dignitates* of the churches and clergy, see, no. 37, 39, 40, 41, 43, 197, 266. Cf., W. Ullmann, *Growth*, 273, 310; *The Correspondence of Pope Gregory VII: Selected Letters from the* Registrum, ed. E. Emerton (New York, 1932), xxiv.

Terms such as *canones*, *statuta*, *decreta*, *constitutiones*, *instituta*, or the 'Holy Fathers' occurred in around one-tenth of the extant *arengae*.[1] For the letters *in toto*, the terms 'canonical' or 'canonically' occurred too regularly to be cited; while 'canon,' in the canonistic sense, appeared in no less than twenty letters, regardless of *arengae*,[2] not including the eighteen canons of the Council of Reims.[3] The term 'sacred canons' appeared in at least an additional sixteen letters.[4] Otherwise, in total, the former *statuta* of popes were referred to in at least twenty-six letters;[5] the

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[1] See, Appendix 1, no. 3, 7, 13, 17, 30, 35, 76, 78, 79, 81, 95, 97, 105, 131, 152, 153, 154, 155, 185, 186, 206, 222, 225, 229, 231, 233, 234, 235, 265, 271, 295. Certain other single terms or phrases which could be associated with *controversiae* or the papal-ecclesiastical jurisprudential sphere which appeared in the *arengae* were 'law' or 'laws' (as a noun): Appendix 1, no. 30, 79, 81, 86, 97, 160, 233, 234, 249, 282. There were also a few instances of the very common term *ius* whereby the term might be translated properly or unambiguously as the English 'law:' Appendix 1, no. 79, 80, 160, 249. For *iustum/aequum*, see, Appendix 1, no. 1, 9, 41, 84, 100, 123, 124, 129, 131, 154, 169, 180, 193, 206, 235, 236, 241, 276, 281, 291; *equum est*, no. 9, 41, 154, 180, 206, 235, 236, 291; *iniusta*, no. 125, 126, 127, 131, 276, 281; *legitima*, no. 125, 126, 127, 282; *aequitas* (in the legal sense), no. 124, 131, 215 (*aequa sunt libramina iustitiae*), 233, 234, 249, 267, 272, 274; 'truth,' no. 12, 77, 124, 137 138, 139, 140, 144, 241, 252, 269, 272, 279; 'judgement' (without reference to divine judgement), no. 137, 138, 139, 140, 146, 157, 245, 252, 253, 254, 255, 267; 'judge' (as a noun), no. 215; the 'eternal judge,' no. 267; the 'Last Judgement,' no. 24; and 'to judge,' 'adjudge,' or adjudicate,' no. 132, 133, 134, 135, 136, 226, 282; 'to settle,' no. 167; *compositio*, no. 243; 'to compose,' no. 246; 'concord,' no. 139, 140, 142, 146, 222, 237, 243, 245, 252, 253, 254, 26; 'definition,' no. 142, 148; 'sentence,' no. 206, 268; *finis*, no. 240, 256, 257, 260; *assertio*, no. 172, 185; 'page,' no. 146, 150, 172, 185, 229; *negotia*, no. 91, 240, 256; 'suits' of the clergy, no. 132, 133, 134, 135, 136, 143, 145, 148, 149, 172, 249, 251; 'scandals' of the clergy, no. 7, 247, 250, 251, 252, 258.

[2] *PL*, Eugene III, no. 126, 134, 351, 366, 449, 463/545 (*Decretales*, Gregory IX, Bk. 5. XVII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4; JL, 9508/9656), 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 67; *IP* 5, 251/25, 181/6; JL, 9654), 580; PUS2, no. 49; PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); PU in Pisa, no. 4 (*IP* 5, 62/213); *EPRI*, no. 196 (JL, 8897), no. 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3 L. 2, Bk. 5. IX. 1; JL, 8959); PUE3, no. 62, 79, (JL, 9547); PUF5, no. 74; PUF2, no. 24, 34; PUF8, no. 34 (JL, 9323); PUF9, no. 45 (*PL*, Eugene III, no. 555; JL, 9678).

[3] Mansi 21, 713-18 (JL 2, 52-53; *Decretales*, Gregory IX, Bk. 2. I. 2, for c. 5), Council of Reims, cc. 1-18.

[4] *PL*, Eugene III, no. 359, 362, 494, 512, 523 (Otto of Freising, *Gesta*, 120-22; JL, 9605); PUE2, no. 63; PUF2, no. 33, 34, 36, 37; PUF8, no. 34 (JL, 9323); PUF9, no. 45 (*PL*, Eugene III, no. 555; JL, 9678); PUS1, no. 62; PUS2, no. 66; *EPRI*, no. 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959); PU in Piemont, no. 7 (*IP* 6/2, 215/12).

[5] *PL*, Celestine II, no. 10; *PL*, Lucius II, no. 23, 43; *PL*, Eugene III, no. 62, 118, 145, 146, 329, 362, 580; *EPRI*, no. 196 (JL, 8897), 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959); PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); PUF2, no. 19, 58, 65; PUE3, no. 62, 63, PUF1, no. 52, PUTJ1, no. 17, PUKHL, no. 58 (*PL*, Lucius II, no. 88; JL, 8700), 63 (PU in Malta, no. 3), PUS1, no. 62; PUS2, no. 49; PU in Venetien, no. 7 (*IP* 7/1, 106/1); PU in Pisa, no. 4 (*IP* 5, 62/213). 'Roman pontiffs' of old are referred to in at least five of the *arengae* proper (Appendix 1, no. 13, 41, 47, 96, 206), and in at least forty-nine letters *in toto*: *PL*, Celestine II, no. 2, 10; *PL*, Lucius II, no. 23, 26, 33, 36, 40, 41, 43, 84; *PL*, Eugene III, no. 1, 25, 59, 76, 82, 148, 152, 208, 209, 254, 296, 324, 342, 458, 570/71; *APRI* 3, no. 76 (*IP* 3, 325/29; *IP* 10, 383/42; JL, 8929), 82 (*PL*, Eugene III, no. 141; JL, 8975), 84 (JL, 9007); PUE2, no. 66; PUF2, no. 34; PUF1, no. 43; PUN, no. 56; PUTJ1, no. 13, 17; Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465), Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45); *LC*, 384-85, no. 96 (*Antiquitates* 2, 559-60; *IP* 2, 207/2), *LC*, 380-82, no. 91(*Antiquitates* 3, 793-96; *IP* 3, 241/14), *LC*, 88-89 (*Antiquitates* 5, 864; *IP* 4, *163/21); *EPRI*, no. 196 (JL, 8877), 206 (JL, 9595); 207 (JL, 9632); Archives historiques du Poitou 3, 20, no. 14 (JL, 9314), 20 no. 15 (JL, 9315); *Historia monasterii S. Augustini Cantuariensis*, 402, no. 30 (JL, 9537); PU in Venetien, no. 7 (*IP* 7/1, 106/1); PU in Turin, no. 13 (*IP* 6/2, 174/14); Römische Analekten, 35-36, no. 3 (*IP* 1, 77/20); PU in Pisa, no. 4 (*IP* 5, 62/213).

term *decretum* appeared in at least twenty-five;[1] the phrase 'Holy Fathers' in an additional twenty-nine;[2] the 'Church Fathers' in one;[3] the *constitutiones* of popes in thirty-nine;[4] the *instituta* or *institutiones* in twenty-four;[5] and 'canonical sanction' in eleven.[6] Nevertheless, there is available no comparative data for preceding or succeeding pontificates upon which to conclude to what extent the use of such terminology around the mid-twelfth-century was either innovative or as yet limited.[7] In any event, it seems clear that, by no later than 1150, juridical terminology had become a common part of the chancery repertoire.

Beyond such rhetorical examples, at least twenty letters directly concerned or made explicit reference to specific *magistri*, in the academic sense of the title, without reference to cardinals[8]—the presence of *magistri* in the cardinalate has been noted. Furthermore, at least one

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[1] *PL*, Lucius II, no. 36; *PL*, Eugene III, no. 28, 62, 308, 366, 443, 463/545 (*Decretales*, Gregory IX, Bk. 5. XVII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4; JL, 9508/9656), 469, 512, 521, 570/71, 579; *IP* 8, *326/25; *APRI* 2, no. 400 (JL, 9564); PUE3, no. 62, 65; PUE2, no. 34; PUF2, no. 34; PUF9, no. 45 (*PL*, Eugene III, no. 555; JL, 9678); PUS1, no. 53 (JL, 8546), 54 (JL, 8928); PUP, no. 46; PUF2, Nach. Gott., no. 10; PU in Padova, no. 3 (*IP* 7/1, 315/6); Wibald, no. 354 (JL, 9521).

[2] *PL*, Eugene III, no. 62, 118, 308, 329, 364, 378, 443, 449, 463/545 (*Decretales*, Gregory IX, Bk. 5. XVII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4; JL, 9508/9656), 468, 469, 476, 494, 522; *APRI* 2, no. 387 (JL, 8774); *EPRI*, no. 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959); PUE3, no. 62; PUE2, no. 63, 66; PUF2, no. 19, 41, 58; PUF1, no. 52; PUS1, no. 60, 62; PUS2, no. 56 (JL, 8934); PUP, no. 46; Wibald, no. 354 (JL, 9521); Ältere PU in den päpstlichen Registern 3, no. 2.

[3] *PL*, Eugene III, no. 534 (*Decretales*, Gregory IX, Bk. 2. VII. 4; JL, 9653) (constitutions of the Church Fathers).

[4] *PL*, Celestine II, no. 28 (*RRH*, no. 221; JL, 8481); *PL*, Lucius II, no. 23, 25, 36, 55, 89 ('apostolic constitution'), 91; *PL*, Eugene III, no. 126, 164, 175, 443, 463/545 (*Decretales*, Gregory IX, Bk. 5. XVII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4; JL, 9508/9656), 522, 532, 534 (*Decretales*, Gregory IX, Bk. 2. VII. 4; JL, 9653), 551, 577, 579; *APRI* 3, no. 61 (JL, 8664); PUE3, no. 70; PUE2, no. 34, 42, 66; PUF2, no. 65, 69; PUF1, no. 41 (JL, 8756); PUF9, no. 45 (*PL*, Eugene III, no. 555; JL, 9678); PUN, no. 68 (JL, 9664); PUKHL, no. 50 (*RRH*, no. 214; JL, 8472a); *EPRI*, no. 190 (JL, 8612); PUF7, Nach. Gott., no. 32; Ältere PU in den päpstlichen Registern 3, no. 2; PU in Venetien, no. 7 (*IP* 7/1, 106/1); *Historia monasterii S. Augustini Cantuariensis*, 391-92, no. 23 (*PL*, Lucius II, no. 82; JL, 8580); Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4); PU in Mailand, no. 9 (*IP* 7/1, 339/38; P-H *Iter*, 239; JL, 8749; the same, nearly, as *Antiquitates* 5, 259-60, *PL*, Innocent II, no. 158, col. 208-09, both from Innocent II); PU in Padova, no. 3 (*IP* 7/1, 315/6); PUF3, Nach. Gott., no. 6; PUF4, Nach. Gott., no. 22.

[5] *PL*, Celestine II, no. 14; *PL*, Lucius II, no. 94; *PL*, Eugene III, no. 3, 87, 134, 361, 449, 476, 495, 512, 521, 562, 580, 548 ('holy ordinances [*instituta*]'); JL, 9145; *APRI* 2, no. 403 (JL, 9603); PUF6, no. 63 (JL, 9358); PUKHL, no. 63 (PU in Malta, no. 3); PUF8, no. 31; *EPRI*, no. 190 (JL, 8612), 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959), 203 (JL, 9243); *Historia monasterii S. Augustini Cantuariensis*, 404, no. 32 (JL, 8904); Nachträge zu den PU in Italiens 5, no. 10 (*IP* 5, 477/26).

[6] *PL*, Lucius II, no. 50; *PL*, Eugene III, no. 359, 521, 523 (Otto of Freising, *Gesta*, 120-22; JL, 9605); PUE2, no. 66; PUE2, no. 69 (JL, 9546); PUN, no. 56; PUF8, no. 34 (JL, 9323); *EPRI*, no. 206 (JL, 9595); Varietà, 400-03, no. 1 (*IP* 1, 173/3; JL, 9604); PU in Campanien, no. 10 (*IP* 2, 147/4). In other examples, the following phrases appeared: 'in accordance with the sentence of St. Gregory,' PUTJ1, no. 17; 'following the sentence of St. Gregory,' *PL*, Eugene III, no. 114; 'the pages of nearly all sacred eloquence,' *PL*, Eugene III, no. 370; 'irrevocably confirming the sentence of our predecessor,' PU in Campanien, no. 10 (*IP* 2, 147/4). The phrase,'having been enacted by the apostolic see' appeared in at least an additional five letters: *PL*, Celestine II, no. 4; *PL*, Lucius II, no. 24; *PL*, Eugene III, no. 28, 43; PUKHL, no. 63 (PU in Malta, no. 3).

[7] Cf., W. Ullmann, *Growth*, 360.

[8] *PL*, Lucius II, no. 92; *PL*, Eugene III, no. 185, 186, 187, 203, 209, 329, 465, 466, 480, 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 67; *IP* 5, 251/25, 181/6; JL, 9654); *IP* 6/2, 119/6; *IP* 7/1, *323/1; PUE2, no. 45; PUS1, no. 57; PUS2, no. 46, 68; Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40;

magister-cardinal promoted in this period, Cardinal-deacon Grecus of SS. Sergio e Bacco (1149), also served on at least one occasion as a subdeacon in the curia—along with another future cardinal, described as a *Magister* John, a clerk of the papal chancellor—as an advocate for a foreign party in trial proceedings at the curia.[1] It was probably with the benefit of such experts in his curia that Eugene could write authoritatively to an unidentified subdeacon of the Roman Church and a *Magister* Omnebene that, 'We have kindly received the letters of your kindness, in which you have inquired whether in that cause which is turning between [the bishop of Bologna and the abbot of Padua], under your examination, it is appropriate that an oath of calumny be taken.' 'Truly,' the pope dictated, 'the Roman Church, in cases in which the tithes of churches and spiritual matters only are concerned, has been accustomed neither to receive nor give an oath of calumny. And indeed causes of this sort deserve a due end, not through the severity of the laws but the fairness of the canons. However, no canons straightforwardly refer to an oath of calumny. Thus, having dismissed the contention concerning an oath of calumny to be given, let your fraternity proceed further.'[2]

3.3 THE PAPAL LEGISLATIVE AND DISPENSING PREROGATIVE

An important aspect of the new jurisprudential science in the second half of the twelfth century was the growth of papal 'decretal' legislation, that is, the issuing and collection of 'decretals' or 'decretal letters,' or 'papal rescripts,' which, it has been said, between the publication of 'Gratian's' *Decretum* and the legislation of the Council of Trent in the sixteenth century, were 'the staple instruments of papal jurisdictional authority.'[3] The development of the process had largely culminated by 1234 with the publication of Gregory IX's *Decretales*—an official codification of the *ius novum*, and the high-water mark of medieval canonistics. At the same time, the collecting of new 'decretals' had come to replace the decretistic studies as the primary pursuit of canonists, while the collections themselves had replaced the same decretistic writings and older canon law as manuals for its study and practice.[4] Despite the vagueness of the actual term 'decretal,' or

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Constitutiones, 201-03, no. 144-45); PU in Ligurien, no. 1 (*IP* 6/2, 382/1); Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4).

[1] See, ch. 2.1 and Appendix 2.

[2] *PL*, Eugene III, no. 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 67; *IP* 5, 251/25, 181/6; JL, 9654); see similarly, PUF2, no. 34.

[3] C. Duggan, *Decretal Collections*, vii.

[4] For 'decretals' and their collections, see, e.g., W. Holtzmann, 'Über eine Ausgabe der päpstlichen Dekretalen des 12. Jahrhundert,' *Nachrichten der Akademie der Wissenschaften in Göttingen: Philologisch-historische Klasse* (1945), 15-36; W. Holtzmann, '*Collectio Eberbacensis*,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 17 (1928), 548-54; C. Duggan, *Decretal Collections*; S. Kuttner, *Repertorium*; S. Kuttner, *Revival*, esp. 316-23; C.N.L. Brooke, 'Canons of English Church Councils in the Early Decretal Collections,' *Traditio* 13 (1957), 471-80; R.L. Benson, *Bishop-Elect*, esp. 12-20; G. Silano, *Of Sleep*, 352-61; I.S. Robinson, *Papacy*, 199-208; J. Sayers, *Judges Delegate*, 34-41; M.G. Cheney,

'decretal letter,' as well as of what exactly constituted one in the twelfth century,[1] for present purposes, what is important is that in the decretal collections in general there was a distinct proliferation of the inclusion of papal letters as decretal entries attributed to Eugene III, Adrian IV, and, above all, Alexander III.[2] In essence, the 'decretal' era, as far as the collectors are concerned, effectively began with Eugene III. W. Holtzmann in 1945 calculated twelve known or identifiable 'decretals' attributed to Eugene III in the decretal collections of the late twelfth and early thirteenth centuries—the era of decretal collecting—with only twenty-seven attributed to the twelfth-century popes preceding Eugene: he counted only eight attributed to Adrian IV, but well over seven hundred to Alexander III.[3] At least six canons of the Council of Reims (1148) also found their way into various decretal collections.[4] And ultimately Gregory IX's official *Decretales* of 1234 contained at least ten entries attributed to Eugene III—including one of the canons of Reims[5]—compared to only one entry for Urban II, five for Paschal II, two for Innocent II, and one

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Avranches, 177-97; see also, and especially for full bibliographies on this very recondite subject, as well as the status of the project initiated chiefly by W. Holtzmann to collect, systematise, and publish all those known, extant decretal letters up to 1982, *Studies in the Collections of Twelfth-Century Decretals: From the Papers of the Late Walther Holtzmann*, ed., rev., and trans. C.R. Cheney and M.G. Cheney (*Monumenta iuris canonici* B: *Corpus collectionum* 3: Vatican City, 1979); W. Holtzmann, S. Chodorow, and C. Duggan, Decretales ineditae; S. Kuttner, 'Notes on a Projected Corpus of Twelfth-Century Decretal Letters,' *Traditio* 6 (1948), 345-50.

[1] These ambiguous terms have been employed somewhat arbitrarily by modern scholars. What seems clear is that for the most part a papal document as a pronouncement on the law become a 'decretal' only when it was adduced as such in decretal collections by their compilers and commentators who were operating largely, until at least the thirteenth century, independent of papal auspices. In this sense, 'decretals' were only made decretals by the decretalists, not necessarily by the popes. Thus, even the collected decretals of Alexander III were not generalised legal statements, but invariably responses to questions concerning particular cases. It was only under the lawyer-pope and former chancellor Gregory VIII, who furnished the collections with eight decretals in his fifty-seven day pontificate, that the practice of issuing general statements of law in decretal form began. Otherwise, it was only the canonists themselves who gave the 'decretals' the character of abstract legal statements, and thus only later, after their initial publication, were what were basically *ad hoc* mandates and responses to questions on judicial procedure converted into papal 'legislation.' See, I.S. Robinson, *Papacy*, 200; S. Kuttner, *Revival*, 317; W. Holtzmann, *Studies in the Collections*, 1; U.-R. Blumenthal, 'Decrees and Decretals of Pope Paschal II in Twelfth Century Canonical Collections,' *Papal Reform and Canon Law in the Eleventh and Twelfth Centuries* (Aldershot, 1998), 15-30, here at, 15-16.

[2] C. Duggan, *Decretal Collections*, 121.

[3] W. Holtzmann, *Uber eine Ausgabe*, 34. In 1957-58, Holtzman included seven 'decretals' of Eugene among the known twelfth-century 'decretals' concerning Italy: Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4, 27, 53, 66, 67, 84, 131. M.G. Cheney, *Avranches*, 183, warned against reading too much into Alexander III's unusually high tally of decretals.

[4] Canons 2, 5, 9, 12, 14, 32; see, W. Holtzmann, S. Chodorow, and C. Duggan, Decretales ineditae, 336.

[5] *Decretales*, Gregory IX, Bk. 2. I. 2 (Mansi 21, 713-18 [JL 2, 52-53], Council of Reims, c. 5); Bk. 2. VII. 2 (with variations to *PL*, Eugene III, no. 543; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 67; *IP* 5, 251/25, 181/6; JL, 9654); Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506); Bk. 2. VII. 4 (with variations to *PL*, Eugene III, no. 534; JL, 9653); Bk. 2. XX. 5 (with variations to *PL*, Eugene III, no. 546; JL, 9657; also in the primitive Canterbury Collection, III. 17—C. Duggan, *Decretal Collections*, 209); Bk. 3. VI. 2 (*EPRI*, no. 199; JL, 8959; also in the primitive Canterbury and Rochester Collections, see, C. Duggan, *Decretal Collections*, 209); Bk. 3. L. 2 (*EPRI*, no. 199; JL, 8959; also in the primitive Canterbury and Rochester Collections, see, C. Duggan, *Decretal Collections*, 209; in the *Decretales* the letter was addressed to the bishop of Lucca; *EPRI*, no. 199/JL, 8959, however, was addressed to the bishop of Salisbury); Bk. 4. I. 3 (with variations to *PL*, Eugene III, no. 544; JL, 9655); Bk. 5. IX. 1 (*EPRI*, no. 199; JL, 8959; also in the primitive Canterbury and Rochester Collections, see, C. Duggan,

for Adrian IV.[1]

It should be observed however that just a single letter to Bishop Joscelin of Salisbury at the end of November 1146 was responsible for three of Eugene's separate decretal entries,[2] although this sort of dissection on the part of the collectors was not uncommon.[3] Thus, in the midst of English civil war, Eugene opened his letter to Joscelin by informing the bishop that he had received his letter concerning certain malefactors afflicting his church, and assured him that he was prepared to bring the brunt of his authority to bear in seeing that the bishop is given his justice. Otherwise, he wrote: 'knowing that throughout all of the provinces responses (*responsa*) to those petitioning always emanate from the apostolic fount (*fons*), we have arranged to respond to the vigilance and consultation of your solicitude, so that thence you might assert a rule and certitude in uncertain things, concerning the whole range of ecclesiastical institutions.' Accordingly, the pope expounded variously on the nature of the canon law:[4] first, on whether a priest who had lost fingers should be allowed to celebrate mass, citing a canon of 'Pope Gelasius' and the Council of Nicea; second, on the status of 'apostate' clerics detained for criminal offences, citing the 'statutes of the Holy Fathers;' third, on whether clerics can be *ministri* or *procuratores* of laymen, or involve themselves in any secular business, and their legal status if detained on account of that business, citing 'sacred canons' and 'human laws;' fourth, on the status or immunity of those despoiled in the course of the English civil war who should subsequently take the cross; and last, on stolen property bestowed upon churches by laymen but not released over to them, and whether they should meet ecclesiastical punishment or not.[5] Thus, by as early as 1146 the curia had self-consciously acknowledged itself as the *fons* of legal *responsa*. It did not however expound its right to introduce innovative legislation.

It has been generally regarded that, despite the ancient prescription to observe and

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Decretal Collections, 209; the *Decretales* attributed this letter to Alexander III); Bk. 5. XVII. 2 (with variations to *PL*, Eugene III, no. 463/545; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4; JL, 9508/9656). See also, for further, distinct, decretals of Eugene III, *Compilatio secunda*, Bk. 3. VI. 2 (JL, 9659); *Collectio Lipsiensis*, XXXI. 4 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 53; *IP* 4, 219/2; JL, 9658).

[1] Also, one each for Gregory VI and Leo IX. *Decretales*, Gregory IX, xii.

[2] *Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1.

[3] See, C. Duggan, *Decretal Collections*, 1-65; K. Pennington, 'The French Recension of *Compilatio tertia*,' *Bulletin of Medieval Canon Law* 5 (1975), 53-71, here at, 64-67; G. Silano, *Of Sleep*; 353-61; S. Kuttner, *Notes*, 345-46; I.S. Robinson, *Papacy*, 201; F.W. Maitland, *Canon Law*, 124-35.

[4] Cf., *PL*, Eugene III, no. 362, to the bishop of Olomouc, October 1149: 'Therefore, about those things concerning which your esteemed person has consulted us, in accordance with the statutes of our predecessors, we have decreed to respond to you...' A similar elucidation on various canon law followed.

[5] *EPRI*, no. 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959). See also, C. Duggan, *Decretal Collections*, 209: it naturally appeared in the 'primitive' English collections. On the lack of 'anarchy' during Stephen's reign, see, H.A. Cronne, *The Reign of Stephen 1135-54: Anarchy in England* (London, 1970), esp. 1-25; E. King, *The Anarchy of King Stephen's Reign* (Oxford, 1994); D. Crouch, *The Reign of King Stephen, 1135-54* (New York, 2000), esp. 1-7, 52-53, 146, 160-61, 165, 298, 312, 335-36, 342;

preserve the established laws, canons, and acts of the Church, including the papacy, the formulation of a doctrine of supreme and unlimited papal legislative authority went back at least as far as Gregory VII and his contemporary canonists, with certain reservations. This was subsequently engraved in canon law by 'Gratian,' then progressively elaborated and justified by the decretists and decretalists of the second half of the twelfth and the thirteenth centuries: the pope's dictates had the force of law, to which the pope himself was not bound. This extended naturally to the pope's boundless dispensing prerogative, especially with regard to papal privileges, which 'Gratian' asserted could be granted, altered, or withdrawn essentially at will, even in contravention of other laws or customs.[1] But the rhetoric of the papal pronouncements of 1143-53 was seldom so confident or assertive. In fact, in the totality of its pronouncements the papacy at mid-century showed itself consistently conservative with regard to legislative matters. The Council of Reims, for example—the only general Church council summoned by the papacy in this period—was decidedly unoriginal in the pronouncements of its canons: most in fact were simply renewals of the two Innocentine councils of Reims (1131) and Second Lateran (1139).[2]

And while Eugene III could and did occasionally assert explicitly the unique primacy of the papacy, as with its prerogative to create or divide bishoprics, for instance, such instances were exceptional. Far more commonly, the pope simply justified his actions on the grounds that he was 'following the trail' of his predecessors. In fact, for the one case in the letters which concerned the

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[1] See, Gratian, *Decretum*, D. 16 d. p. c. 4, D. 17 (only d. a. c. 1, cc. 1, 6 were in the first recension of the *Decretum* of 'Gratian I'), D. 19 (only d. a. c. 1, cc. 1, 2, d. p. c. 7, c. 8, d. p. c. 8, c. 9, were in the first recension), D. 20 (only d. a. c. 1, c. 1 were in the first recension), D. 21 (only d. a. c. 1, c. 1, d. p. c. 3, cc. 4, 5 were in the first recension); C. 25 q. 1 (all of which was included in the first recension of the *Decretum* except cc. 6-10, 15, 16; C. 25 q. 2 d. p. c. 21, d. p. c. 25, C. 25 q. 2 (all of which was included in the first recension, except, cc. 2-6, 14-16, d. p. c. 16, cc. 20, 22; see, A. Winroth, Decretum, 198-99, 220-21); Rolandus, Glossa a C. 25 q. 2, in *Die* Summa magistri Rolandi, *nachmals Papstes Alexander III., nebst einem Anhange*: Incerti auctoris quaestiones, ed. F. Thaner (Innsbruck, 1874), 108; *Liber Diurnus*, *Formula* 83; Gregory VII, *Das Register*, Bk. 2. LXVII. 223-25, Bk. 2. LXXV. 237-38, Bk. 8. XII. 531-32; *PL*, Innocent II, no. 136, col. 178-79, no. 224, col. 271-72 (JL, 7763), no. 310, col. 355-57, no. 323, col. 372 (JL, 7908); *PL*, Eugene III, no. 111 (P. Classen, *Gerhoh von Reichersberg*, 346, no. 41; JL, 8922). On this, in general, see, e.g., S. Chodorow, *Gratian*, 133-86; C. Duggan, *Decretal Collections*, esp. 27-44; K. Pennington, *Papal Monarchy*, esp. 13-114; J.A. Watt, *Papal Monarchy*, 9-105; B. Tierney, *Foundations*, 28-67; I.S. Robinson, *Papacy*, 145, 186-208, 237; I.S. Robinson, *Institutions*, 390-91; G. Silano, *Of Sleep*, 343-61; H.M. Klinkenberg, 'Die Theorie der Veränderbarkeit des Rechtes im frühen und hohen Mittelalter,' Lex et Sacramentum *im Mittelalter*, ed. P. Wilpert (*Miscellanea mediaevalia*: Veröffentlichungen des Thomas-Instituts der Universität zu Köln 6: Berlin, 1969), 157-88, here at, 157, 174; S. Kuttner, *Revival*, 316; W. Ullmann, *Growth*, 359-81; G. Barraclough, *Papacy*, 105.

[2] See, N. Häring, *Notes*, esp. 45, and 58, where he stated that, 'Politically speaking, the basic aim of the council was a very modest one: not world domination but moral reform. But the preparation for its successful launching was so poor that its message was little more than the lifeless repetition of previously promulgated canons;' cf., I.S. Robinson, *Papacy*, ch. 3, esp. 121, 131, 135-36, 140, 142, 144-45. For the canons of Reims, Mansi 21, 713-18 (JL 2, 52-53; *Decretales*, Gregory IX, Bk. 2. I. 2, for c. 5), Council of Reims, cc. 1-18; for the council, see, Mansi 21, 711-36, 739-42; for other primary sources, see, JL 2, 52-53. For the canons of Reims (1131), see, Mansi 21, 457-62 (JL 1, 850-51), Council of Reims; and for Second Lateran (1139), see, Ecumenical Councils 1, 197-203 (Mansi 21, 525-33; JL 1, 885-86), Second Lateran Council.

papal creation of a bishopric, that of Tournai, the pope pronounced in July 1146 that he did so having been 'incited by the constitutions of the holy canons and the *studium* of our predecessors of happy record, Urban [II], Paschal [II], and Innocent [II], who have deliberated over this itself.'[1] And in the case of the deprivation and division of the bishopric of Modena in August 1148, the pope acted only with the benefit of the council of Cremona.[2] And although in the area of the dispensing power the pope often showed himself ready to deviate from the full *rigor* of justice and thus show leniency to those who resisted his will, this itself occurred primarily out of practical necessity imposed by the curia's own lack of powers of coercion. Likewise, the sudden presence of 'decretal letters' under Eugene III, while perhaps reflecting a growing legalism in the curia, as personal and *ad hoc* letters of procedural advice did not reflect *per se* a conscious sense of its own legislative prerogative.

There is some anecdotal evidence to the contrary. John of Salisbury noted, and not without a note of disapprobation, that Eugene 'himself easily retracted the sentences of his predecessors, not to mention his co-bishops.'[3] It is unclear upon which specific decisions John of Salisbury might have based this opinion: his appraisal of Eugene was on the whole was hazy and at times ambivalent. In a more tangible case, John of Salisbury related that, ca. 1151, after the death of Abbot Suger of St. Denis, Suger's nephew, Simon, who had been accused of simony and dismissed as royal chancellor to the French court, took refuge with the pope who granted him a unique privilege of protection stipulating 'that he can not be forced to respond over any crime except in the presence of the highest pontiff.' The French bishops 'were vexed at the form of the abovementioned privilege, because it was seen to facilitate the audacity of criminals and to animate partakers of crime towards similar privileges.'[4] Far more concrete evidence, however, suggests that the curia around mid-century was inclined to propound a doctrine of legislative conservatism, to preserve the acts of its predecessors. This was a 'policy' that was recognised by Bernard of Clairvaux himself who, in his *De consideratione*, acknowledged that if the pope followed his philosophy completely, since 'it is not customary for a pope to do so,' he 'will indeed annoy many people.' He 'will be like a person who abandons the trail of his ancestors, and this

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[1] *PL*, Eugene III, no. 126; for this case, see, *PL*, Eugene III, no. 96, 97, 98, 99, 126; *Historiae Tornacenses*, 345-46 (JL, 8889, 8890); *EPRI*, no. 194 (JL, 8888), 195 (JL, 8887), 200 (JL, 9079); also, *Historiae Tornacenses*, 340-44; *Herimanni liber de restauratione S. Martini Tornacensis*, 318-27, esp. 326.

[2] See, *PL*, Eugene III, no. 316, 339, 344; *IP* 5, *250/23, *320/4, *320/6, *315/1; JL 2, 58.

[3] *HP*, 51.

[4] *HP*, 87-88. In fact, on 19 January 1152 Eugene III would write to the bishop of Beauvais commending the same Simon in rather fervent terms but mentioning nothing of his special privileges *per se*. *PL*, Eugene III, no. 481. Celestine II had also apparently restored to the cardinalate Cardinal Peter of Pisa, deposed by Innocent II for his support of the antipope. See, John of Salisbury, *Policraticus*, ed. C.C.I. Webb (Oxford, 1909), Bk. 8. XXIII. 812; *PL*, Celestine II, no. 1 (JL, 8433); also, B. Zenker, *Mitglieder*, 103-04; H.-W. Klewitz, *Das Ende des Reformpapsttums*, 214-15; I.S. Robinson, *Papacy*, 70-71. Cf., also, *HP*, 43; Bernard of Clairvaux, *Letters*, no. 151, 257, 431 (B.S. James, no. 157, 330, 156); *LP*, 383; E. Vacandard, *Vie de Saint Bernard* 1, 345-50; W. Watkins, *St. Bernard of Clairvaux*, 124-26.

will be seen as an affront to them.'[1] Indeed, the requirement to follow the example of one's predecessors was stated plainly enough by the popes in the period 1143-53 in several individual *arenga* statements.[2] Thus, in late 1143 Celestine II wrote that the 'order of justice and reason advises that those who desire that their own mandates are preserved by their successors should guard the will and statues of their predecessors.'[3] This would be repeated in more or less the same words on a handful of occasions by Celestine's two immediate successors.[4]

In general, the papal letters commonly contained the genitive-case construction 'of our predecessors,' as in the enacting clauses which announced that decision was being given 'following in the footsteps (*vestigia*) of our predecessors,' which occurred verbatim in at least twenty-seven separate letters.[5] And in practice, in a great many cases, the pope proffered judgement simply, as he related, on the basis of the production or inspection of previous papal, or other, instruments, without further consideration. Thus, when Lucius II issued judgement in favour of the archbishop of Tours over his metropolitan controversy with the bishop of Dôl, he did so, he stated, because Tours had simply adduced a privilege of Urban II supporting his cause: Dôl, conversely, put forth no papal document as evidence.[6] At the beginning of 1147 Eugene III confirmed Lucius' sentence using Lucius' letter basically verbatim.[7] Hundreds of analogous instances could be adduced.[8] In fact, this type of conservatism was essential to the curia's basic procedures of justice, with the reliance on the production and use of chancery documents. Indeed, the premium on papal justice in the provinces proceeded from and turned upon, to a considerable

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[1] *De consideratione*, Bk. 1. IX. 12 (42-43).

[2] See, Appendix 1, no. 35, 47, 105, 152, 153, 154, 155, 206; also, Appendix 1, no. 13 ('following the authority of St. Gregory and many Roman pontiffs'), 96 ('it is recognised to have been instituted by St. Gregory and many other Roman pontiffs').

[3] Appendix 1, no. 153 (*PL*, Celestine II, no. 10).

[4] See, Appendix 1, no. 47 (PUTJ1, no. 13), 152 (*PL*, Lucius II, no. 23), 154 (*PL*, Lucius II, no. 88), 155 (*PL*, Eugene III, no. 152).

[5] *PL*, Lucius II, no. 40, 41, 43, 48; *PL*, Eugene III, no. 59, 152, 174, 239, 570/71; *APRI* 3, no. 76 (*IP* 3, 325/29; *IP* 10, 383/42; JL, 8929), 91 (JL, 9292); PUE2, no. 42, 43, 63, 66; PUF5, no. 73; PUF6, no. 62; PUF1, no. 43; PUN, no. 56; PUS1, no. 53 (JL, 8546), 54 (JL, 8928); PUP, no. 41; *EPRI*, no. 190 (JL, 8612); PUF1, Nach. Gott., no. 30 (JL, 8819); PUKHL, no. 58 (*PL*, Lucius II, no. 88; JL, 8700); PU in Pisa, no. 4 (*IP* 5, 62/213); Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256). In similar examples, see, *PL*, Eugene III, no. 114, 463/545 (*Decretales*, Gregory IX, Bk. 5. XVII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4; JL, 9508/9656); *APRI* 3, no. 84 (JL, 9007); also, *PL*, Celestine II, no. 2, 17, 29 (*RRH*, no. 222; JL, 8482), 41; *PL*, Lucius II, no. 24, 25, 28 (JL, 8593), 29 (JL, 8594), 37, 40, 79, 89; *PL*, Eugene III, no. 1, 2, 43, 60, 76, 82, 87, 100, 126, 256 (*IP* 7/1, 339/42; JL, 9189), 296, 322, 324, 362, 371, 443, 548, 533, 572, 579; Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 364, no. 932 (JL, 8780); *EPRI*, no. 190 (JL, 8612), 193 (JL, 8877); *APRI* 3, no. 73 (JL, 8898)), 75 (JL, 8916); PUE3, no. 62, 65, 74; PUE2, no. 34, 50 (JL, 8863); PUE1, no. 54; PU in Padova, no. 3 (*IP* 7/1, 315/6); PUF5, no. 62; PUF2, no. 22, 33, 34, 36, 37; PUKHL, no. 63 (PU in Malta, no. 3); PUS2, no. 68; PU in Florenz, no. 10 (*IP* 3, 122/18); Urkunden zur Geschichte von Farfa, 177-78, no. 1 (*IP* 2, 68/52). See also, *PL*, Celestine II, no. 20. Cf., *PL*, Eugene III, no. 537.

[6] *PL*, Lucius II, no. 40.

[7] *PL*, Eugene III, no. 152.

[8] See, e.g., *PL*, Lucius II, no. 24, 25, 37; *PL*, Eugene III, no. 572; Urkunden zur Geschichte von Farfa, 177-78, no. 1 (*IP* 2, 68/52).

extent, the curia's capacity to produce and enforce for all and sundry documentary authentication. Disregard of these muniments would undermine this very basis, although it potentially opened up new avenues for fraud and forgery.

3.4 THE PAPAL APPELLATE PREROGATIVE

The primary practical basis of the curia's everyday involvement in the affairs of the local churches of western Europe was the growing realisation of the Roman court's right as Christendom's court of last appeal—or any appeal, for that matter—and the unassailable right of, if not every Christian, every cleric and religious to recourse to the 'refuge' of the Roman court. This developed into the establishment of the same court as one of first instance for all manner of business. G. Le Bras described the papal mandate and appellate system as two of the most powerful means of papal centralisation, both of which were provided by the Roman Law.[1] K. Pennington stressed that 'Gratian' was not particularly interested in the juridical relationships of the ecclesiastical hierarchy, as he accepted papal monarchy 'as an established fact.' Neither did he begin the *Decretum* with a general discussion of the papal office, nor define the judicial prerogatives of the pope with any precision: that task was left to his successors at Bologna.[2] 'Gratian' did in fact, however, collect various texts defining the right of appeal; and 'Gratian I's' first recension of the *Decretum* basically prescribed the free right of appeal, especially for members of the episcopate and all others who felt themselves oppressed, prejudiced, or aggrieved (*gravatus*) at the ordinary court, both before and after sentencing. And while it seems that the *Decretum* preferred a due process through first the metropolitan or primate's court, it also maintained the law that the pope's judgement was final, and that the pope himself could be judged by none.[3]

The papal record itself of the decade after 1143, while providing little direct insight into the curia's own doctrine on the subject, indicates that in the decade after the death of Innocent II—who, more than anyone before him, it has been thought, actively encouraged the expansion of the amount of business being brought to 'Rome'—the road to Rome was in fact open to all and that an unqualified right of appeal or of bringing a case in the first instance to the curia was being exercised at all levels and by all orders of the ecclesiastical hierarchy, as well as laymen, throughout western Europe to such an extent that, for the curia, it had become a matter of everyday routine. Appropriately, G. Barraclough reckoned some seventy years ago that the 'fact is that the development of appeal, of delegate jurisdiction, etc., began about the pontificate of Eugenius III;'

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[1] G. Le Bras, 'Le droit romain au service de la domination pontificale,' *Revue historique de droit français et étranger* 4/27 (Paris, 1949), 377-98, here at, 391; also, J. Sayers, *Judges Delegate*, 65.
[2] K. Pennington, *Papal Monarchy*, 80.
[3] For this, see, ch. 1.3.

and that these processes 'were, from the point of view of canon law, the outstanding innovation of the twelfth century.'[1] No one, however, has yet taken the time or effort to check this conjecture, accurate though it was, against the existing papal record. Indeed, Bernard of Clairvaux's sentiments on the subject in the *De consideratione* were explicit enough: 'Appeal is made to you from the whole world; this, indeed, is in testimony of your unique primacy.' In fact, Bernard was scandalised by both the amount of judicial business flooding into the curia and the rampant abuse of the appellate system, which he wished were as beneficial as it was necessary.[2] But Eugene himself clearly recognised that the appeal system buoyed his authority and primacy. In 1146 he reprimanded the archbishop of Reims for acting against an appeal made by the archbishop of Bourges who had 'come to the haven of repose...that ultimate refuge of the unfortunate, namely, the appeal of the apostolic see.' To act thus, was to act 'in contempt of us and the highest contempt of St. Peter.' For, he assailed the archbishop of Reims, 'if you would have given solicitous consideration to just how much you would offend and detract from the dignity of your mother, the holy Roman Church, you would have by no means rushed forth in such great audacity.'[3]

In fact, the power and effect of Roman appeal was such that it was jealously protected by popes, brooking no abrogation of its license, while apparently treasured and resented alike by churchmen. For instance, in 1149 Eugene delegated a case to Abbot Suger of St. Denis concerning a certain priest who had complained to the pope that the archdeacon of Sens had expelled him from his church for refusing to offer him a payoff: 'And since he has appealed him to our audience over this, the same archdeacon caused him to be beaten by his parents (*parentes*) with sacrilegious audacity.'[4] A similar letter was sent to the bishop of Sens.[5] Still, the cause found its way back to the curia, apparently in a second appeal, as the pope was compelled to write back to Suger in May 1150 that the same priest had lately returned to the papal presence with a representative of the archdeacon of Sens. But as the plaintiff was 'not in the least bit able to proceed in the cause itself, just as reason demands, we have ordered that he desist from his complaint, and we have commanded the aforementioned archdeacon, going to purge himself canonically of the charges, to be presented to your presence' and 'absolved from the claim of the aforementioned priest.'[6] Whether the priest had been simply prevaricating is not clear. If so, this case also demonstrated a potential ancillary of the Roman appellate system: abuse of the system to

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[1] G. Barraclough, *English Historical Review* 53 (1938), 494 n. 3.
[2] *De consideratione*, Bk. 3. II. 6 (85).
[3] *PL*, Eugene III, no. 101; see also, *PL*, Eugene III, no. 458 (where an appellant is described as 'coming at length to the ultimate refuge'), 494 ('the refuge of appeal').
[4] *PL*, Eugene III, no. 372.
[5] *PL*, Eugene III, no. 373.
[6] *PL*, Eugene III, no. 387.

avoid prosecution or to obtain judgement through fraudulent means. Ultimately, it is difficult to conclude whether such potential abuse was merely an inevitable by-product of the system or was, in fact, by opening up channels to opportunism and dishonest litigation, a stimulus to it.

The question of Rome as a court of first instance is more problematic; and there has not been any general consensus in the historiography as to at which point Rome became as a matter of course a tribunal of first instance for all of the provinces of the Church. For E.W. Kemp, it was Alexander III, 'more than any other single person, who established the papal curia as not only a court of appeal for all Christendom, but also a court of first instance,'[1] By ca. 1190 the canonist Huguccio would indeed write that 'the Roman church is the common and general court (*forum*) of all clerics and all churches, and the lord pope is the judge ordinary of all, as with no intermediary existing, and therefore it is allowed to any whomsoever to appeal to him ignoring the intermediary.'[2] For the earlier period, the *Decretum* itself had basically nothing to say on the matter of first instance jurisdiction *per se*, beyond the few questions concerning the *causae maiores*.[3] For the papal letters themselves of the period 1143-53 it is in fact often impossible to divine whether a case in question arrived at Rome as an appeal or as a case of first instance. In fact, the word 'appeal (*appellatio/appellare*)' itself, in direct or specific reference to a case being appealed or having been appealed to Rome, occurred in only twenty-two letters of the period 1143-53.[4] There were eighteen further instances of the term 'appeal' in the context of further appeal being removed.[5] While this was still a great increase in the incidence of the term itself from the pontificate of Innocent II,[6] this leaves in total only forty distinct letters of some more than 500 total letters of the period 1143-53 concerning clerical controversies. This is certainly not a fair representation of those causes which arrived at the curia on appeal, as the context of other letters bore out. A greater indication was provided by those letters in which the pope reported that he was

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[1] *Papal Decretals relating to the Diocese of Lincoln in the Twelfth Century*, ed. W. Holtzmann and E.W. Kemp (Lincoln Record Society 47: Hereford, 1954), xviii; see also, J. Sayers, *Judges Delegate*, 5.

[2] Huguccio, *Summa* ad C. 2 q. 6 c. 4, cited by J.A. Watt, *Papal Monarchy*, 94, who provided the Latin; see also, J.A. Watt, *Papal Monarchy*, 92-105. Cf., I.S. Robinson, *Papacy*, 185-86; F.W. Maitland, *Canon Law*, 103, 111-13, 127-29.

[3] See, ch. 1.3. Cf., C. 9 q. 3 d. p. c. 9, c. 17, which were not included in the first recension of 'Gratian I;' see, A. Winroth, Decretum, 211; see also, J. Sayers, *Judges Delegate*, 5; F.W. Maitland, *Canon Law*, 104, who interpreted this last canon as part of the original recension.

[4] *PL*, Eugene III, no. 6, 11, 36, 37, 101, 329, 372, 373, 374, 450, 512; *APRI* 2, no. 394 (JL, 9160); *APRI* 3, no. 80 (JL, 8960); PUE2, no. 64 (JL, 9433), 71 (JL, 9591); PUE3, no. 47, 90; PUF2, no. 48; PUS1, no. 59; PUS2, no. 68; *EPRI*, no. 207 (JL, 9632); Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256).

[5] *PL*, Eugene III, no. 149, 488, 494, 495, 517, 518, 519; *IP* 7/2, *104/4; *IP* 6/1, *76/10 (JL, 8471); *Decretales*, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506); PUE2, no. 72 (JL, 9611); *EPRI*, no. 213 (JL, 9733); PU in Piemont, no. 4 (*IP* 6/2, 14/28); *APRI* 2, no. 380 (JL, 8632); PUN, no. 50; PUS2, no. 67; PU in Pisa, no. 2 (*IP* 5, 61/204); PUF2, no. 70; see also, F.W. Maitland, *Canon Law*, 107.

[6] In total, regardless of the context, the term *appellatio* or *appellare* occurred in only nine letters of Innocent II from the *Patrologia latina*; see, *PL*, Innocent II, no. 51, col. 99-101, no. 154, col. 201-03, no. 178, col. 226-27, no. 217, col. 264-65, no. 295, col. 342-43, no. 409, col. 472-75, no. 483, col. 554-55, no. 484, col. 555, no. 566, col. 629-30.

addressing a cause 'having been prosecuted' or 'set in motion a long time now.'[1] On the other hand, as suggested by the frequent report in the letters that the pope had simply 'received the complaint' of some party without any reference to a lower court or proceedings,[2] the procedure of bringing cases to Rome in the first instance was firmly established and regularly exercised by the mid-twelfth century.

In any event, whether causes were arriving at the curia as appeals or as cases of first instance, the pope and his personnel were dealing with a steady influx of day-to-day judicial business. That growth had seemingly increased enough for Bernard of Clairvaux to pronounce his famous denunciations of papal judicial and worldly preoccupations. The poignancy of the situation was that while the pope's temporal and juridical roles consumed the energy and business of the curia, that which affirmed and underpinned his primacy, in this case, the voluminous flow of appeals and causes to the curia, was becoming increasingly onerous. In the first two months of his pontificate Celestine II wrote to Cluny describing his election and beseeching their prayers on his behalf: 'such great burdens of public affairs so oppress that the soul should scarcely ever be raised up to the heavens. I am beaten by the many waves of causes; and after those reposes of quiet which I recollect to have had before this office, I am so afflicted with the great tempests of the tumultuous life that I might rightly say: "I have come into the depths of the sea, and the tempest has immersed me."'[3] Stereotyped confessions of this sort, however, must always be viewed with a degree of circumspection; and it is indeed difficult if not impossible to assess for this period precisely to what extent the flood of causes to the curia had become oppressive or over-straining. What is clear is that the problems of overstrain and even abuse of the system had become marked

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[1] See, e.g., *PL*, Lucius II, no. 24, 25, 40, 41, 79; *PL*, Eugene III, no. 18, 60, 72, 76, 82, 127, 152, 183, 449; *APRI* 1, no. 204 (JL, 8919); *APRI* 2, no. 380 (JL, 8632), 382 (JL, 8654), 383 (JL, 8659); *APRI* 3, no. 70 (JL, 8826), 75 (JL, 8916); *EPRI*, no. 202 (JL, 9237); PUE3, no. 49, 79 (JL, 9547), 90; PUE2, no. 71 (JL, 9591); PUF3, no. 32, 33; PUF5, no. 62; PUF6, no. 61; PUF5, Nach. Gott., no. 17; PUF7, Nach. Gott., no. 36; PUS1, no. 61; PUS2, no. 52, 68; PUP, no. 52; Archives de l'Orient latin 2, 253, no. 1 (JL, 9165); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 364, no. 932 (JL, 8780), 369-70, no. 932 (JL, 9393); Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256); PU in Florenz, no. 10 (*IP* 3, 122/18), 14 (*IP* 3, 138/15); Nachträge zu den PU in Italiens 2, no. 9 (*IP* 3, 179/15; JL, 8497); PU in Padova, no. 3 (*IP* 7/1, 315/6); PU in Pisa, no. 4 (*IP* 5, 62/213).

[2] See, e.g., *PL*, Celestine II, no. 23, 24, 25, 46; *PL*, Lucius II, no. 11, 14; *PL*, Eugene III, no. 34, 57, 105, 123, 124, 147, 201, 221, 246, 247, 255, 274, 288, 296, 303, 308, 370, 386, 400, 403, 412, 422, 423, 434, 443, 447, 450, 452, 453, 459, 460, 467, 468, 470, 486, 505, 506, 507, 514, 532, 541, 552, 549, 563, 564, 565, 566; *APRI* 1, no. 228 (JL, 9665); *APRI* 2, no. 385 (JL, 8695); *EPRI*, no. 188 (JL, 8554), 189 (JL, 8555), 201 (JL, 9164); PUE3, no. 58, 71; PUE2, no. 33, 36 (JL, 8625), 65 (JL, 9428), 69 (JL, 9546); PUE1, no. 29; PUF5, no. 58, 60, 74; PUF2, no. 27, 32, 33, 36, 37, 41, 58, 70; PUF7, no. 66; PUF6, no. 54; PUF9, no. 45 (*PL*, Eugene III, no. 555; JL, 9678); PUTJ1, no. 17; PUF7, Nach. Gott., no. 28, 35; Archives historiques du Poitou 2, 33-34, no. 21 (JL, 8842); Archives de l'Orient latin 2, 253-54, no. 2 (JL, 9166); *Chronicon monasterii de Abingdon* 2, 200 (JL, 9100); PU in Venetien, no. 7 (*IP* 7/1, 106/1); Nachträge zu den PU in Italiens 9, no. 6 (*IP* 7/1, 239/24; JL, 9333); Urkunden zur Geschichte von Farfa, 177-78, no. 1 (*IP* 2, 68/52); PU in Pisa, no. 2 (*IP* 5, 61/204), 4 (*IP* 5, 62/213); Le bolle pontificie, Montecassino, no. 18 (*IP* 2, 158/12); see also, F.W. Maitland, *Canon Law*, 114.

[3] *PL*, Celestine II, no. 2.

enough to result in this period in certain primitive attempts at reform,[1] but most markedly in the processes of delegation: the delegation of lesser causes to curial officials, especially the cardinals; and more especially in the development of the system of judges delegate (*iudices delegati*)—prelates commissioned to hear individual cases which had originated in or around their localities, but whose commission terminated with completion of the case.

3.5 JUDICIAL PROCEDURE AT THE CURIA AND THE 'PROTOCOL OF HUESCA'

According to G. Barraclough, in most aspects of judicial procedure even well into the thirteenth century there was no such thing as 'normal procedure.' This was true both of appeals and of delegate jurisdiction. And significantly, he maintained, the regular use of the procedure of appeal and delegate jurisdiction began about the pontificate of Eugene III.[2] In fact, already before 1141 the Bolognese jurist Bulgarus, one of the *quattuor doctores* and a judge delegate of Eugene III in a case in 1151,[3] composed and dedicated to the chancellor Cardinal Haimeric (1123-41) a concise survey of procedural law and some of the *regulae iuris* of the *Digest*, as the chancellor had requested clarification of terminology pertaining to procedural rules and lawsuits—E.H. Kantorowicz described it as 'the oldest evidence of a scientific give-and-take connection between the glossators of the civil law and the curia.'[4] Yet is difficult to prove that this manual on procedure exercised any influence on the curia.[5] Procedural difficulties, continued J. Sayers, as distinct from legal, were still strongly evident in the period immediately following the presumed completion of 'Gratian's' *Decretum*.[6] Indeed, the *Decretum*, compared to the plentiful chapters in the *Quinque compilationes* from the end of the century and Gregory IX's *Decretales* (1234), contained very little about canonical procedure, and much of what it did contain was not included in the first recension of 'Gratian I.'[7] What the *Decretum* was concerned with was basically preliminary or subsidiary processes and not typically those associated with actual pleading, adjudicating, or execution, although it firmly maintained, for instance, that the burden of proof

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[1] See, ch. 6.3.
[2] G. Barraclough, *English Historical Review* 53 (1938), 494 n. 3.
[3] See, *IP* 7/1, *323/1 (*laudatum* in a *charta* of 7/8/51); see below, ch. 5.2.
[4] E.H. Kantorowicz and W.W. Buckland, *Glossators*, 70-71.
[5] See, K.W. Nörr, *Jurisprudence*, 330; E.H. Kantorowicz and W.W. Buckland, *Glossators*, 68-72; J. Sayers, *Judges Delegate*, 45.
[6] According to C. Lefebvre, the *Decretum* itself was deficient primarily with regard to questions of marriage, benefices, rescripts, the delegation of authority, judicial procedure, criminal procedure, especially with regard to accusations, and the effect of sentences when appeal is made. G. Le Bras, C. Lefebvre, and J. Rambaud, *L'âge classique 1140-1378: Sources et théorie du droit* (Histoire du droit et des institutions de l'Église en Occident 7: Paris, 1965), 140-41, cited by S. Chodorow, *Gratian*, 247 n. 1; on the production of procedural books in the twelfth century, see, J. Sayers, *Judges Delegate*, 42-54.
[7] See, Gratian, *Decretum*, C. 2 qq. 1-6, 8, C. 3 qq. 6-7, 9, 11, C. 4 qq. 1-6; J. Sayers, *Judges Delegate*, 43-45; also, A. Winroth, Decretum, 206-09, on the parts included in the first recension.

should be placed upon the accuser.[1]

Furthermore, it is now generally accepted that most Roman Law sources in the standard editions of the *Decretum* were later additions, or *paleae*, which may have been added by subsequent decretists who were attracted increasingly towards the civil law procedure as a supplement to the deficiencies of the existing canon law, including the work of 'Gratian.'[2] Most modern authorities have assumed that the study of the Roman Law at Bologna was significantly advanced by ca. 1140, and that the omission of its sources from the recensions of the *Decretum* were conscious decisions, from various political or ideological motives, on the part of their author or authors, who were in any event certainly well versed in the Roman Law.[3] A. Winroth has recently challenged these assumptions, arguing that 'Gratian I' at least, as author of the first recension, was clearly ignorant of the Roman Law; that even his use of romanistic concepts was decidedly amateurish; and that, in fact, the development of its study at this time was still quite immature, although it developed profoundly rapidly after Gratian. Speaking of both canon and Roman Law, Winroth concluded that 'everything points to a discipline in quick, almost revolutionary expansion, which in less than ten years outgrew the work that had formed it.'[4]

In fact, allusions to procedural difficulties in both the ordinary and delegated courts of the Church into the 1150s appeared in the letter collection of John of Salisbury, in which several letters, for instance, from Archbishop Theobald of Canterbury to the pope, described cases being referred or re-referred to Rome by the judges or parties when various procedural problems or objections arose. In the papally delegated causes, difficulties or objections arose because the papal rescript itself lacked sufficient technical detail or a party felt itself prejudiced by the choice of judges.[5] According to J. Sayers, these letters demonstrated that the outline of the *ordo iudicarius* was not yet 'developed, uniform, or fully understood.'[6] Thus, in a sometimes circular manner, reference to Rome increased whereby the pope progressively defined procedure. In turn, this process sped the acceleration of the development of decretal 'legislation' and collection.[7] In fact, procedural information was scattered throughout the *Corpus iuris civilis* and was thus not conveniently accessible to anyone. Accordingly, especially in the decades following the

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[1] See, Gratian, *Decretum*, C. 7 q. 5.
[2] See, J. Sayers, *Judges Delegate*, 42-43. C.N.L. Brooke and A. Morey noted that Gilbert Foliot's letters showed that 'he applied the authorities of Roman Law to problems of procedure in canon law courts without hesitation.' C.N.L. Brooke and A. Morey, *Foliot and Letters*, 59, and, on the bishops, procedure, and Roman Law in general, 52-69, 230-44.
[3] See, e.g., S. Chodorow, *Gratian*, esp. 62-63.
[4] A. Winroth, Decretum, esp. 144-74, here at, 145.
[5] See, e.g., *The Letters of John of Salisbury* 1, 91-92, no. 53, 97-98, no. 57, 112-13, no. 70, 113-14, no. 71, 118, no. 74, 130-31, no. 83, cited by, J. Sayers, *Judges Delegate*, 43-44.
[6] J. Sayers, *Judges Delegate*, 43-44.
[7] See, C. Duggan, *Decretal Collections*, 21; Robinson, *Papacy*, 201; P. Herde, *Formularies*, 323; J. Sayers, *Judges Delegate*, 44-45.

dissemination of the *Decretum*, procedural treatises, akin in their private origin to the decretal collections, were devised to help judges and litigants. Among the first was the *Ordo iudiciorum* of Bulgarus mentioned above. Throughout the twelfth century, however, it is said, such treatises were far ahead of practice, and one should be careful not to place too much importance upon them.[1] At Rome, according to A. Winroth, it was 'particularly after Alexander III' that papal government became 'more complex, ambitious, and bureaucratic, creating a new case law through the increasing number of legal cases decided in the pope's court'—leading to the decretal collections.[2]

Indeed, the papal evidence from the mid-twelfth century indicates that there was no thorough and detailed system of procedure which was used or expected to be used consistently in all particulars for cases that were brought to the curia. With that said, there were still obviously rules of procedure, some of which became basic to papal practice. For instance, causes invariably appear to have begun with a petition or plaint, in the first instance or on appeal, and, only very rarely, through report, in which case the pope acted more or less *ex officio*. At the beginning of the 1140s, according to Abbot Hariulf of Oudenbourg's account, the procedure of impetration or petition could be decidedly informal or personal, without a written petition simply submitted to some official, but through the personal intercession of the chancellor or another cardinal, who, in this case, led the abbot 'by hand into the consistory' after coaching him on how to properly approach the pope.[3] In the bishop of Huesca's case in 1145, as discussed below, procedure appears to have been considerably more formal and professionalised. In any event, after petition and hearing a mandate or summons to an opposing party could ensue, as could a trial, if both parties were present, or delegation of the cause, or any combination of these. The pope could also simply respond *ex parte* in the absence of the defendant by issuing a mandate to him or to a delegate requiring the offending party to cease with all illicit activity and possibly make restitution, often with the proviso that the initial complaint or accusation was valid. In trial, both at the curia and in the provinces, the parties, their witnesses, and their documentary evidence were expected to be heard, interrogated or inspected, and 'understood'—the increasing use of papal documentation in litigation both at Rome and in the provinces apparently added to the complexity and uncertainty over procedural details. The presumptive result as far as the curia was concerned was simply the satisfaction of *iustitia*, which could result through adjudication or sentencing, compromise or settlement, or re-appeal. Within this system, procedure, including enforcement, could seemingly proceed variously and *ad hoc*. And in numerous letters of this period, the pope either answered inquiries or issued mandates of delegation with more or less specific, though again

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[1] See, E.H. Kantorowicz and W.W. Buckland, *Glossators*, 70-72; J. Sayers, *Judges Delegate*, 45-46; K.W. Nörr, *Jurisprudence*, 330.

[2] A. Winroth, Decretum, 145.

[3] 'Der Bericht des Abtes Hariulf von Oudenburg über seine Prozessverhandlungen an der römischen Kurie im Jahre 1141,' ed. E. Müller, *Neues Archiv* 48 (1930), 97-115, here at, 102-03.

ad hoc, procedural instructions.

Thus, soon before his death, Eugene III re-delegated a case to the bishops of Nîmes and Viviers, who had deferred to the pope on account of certain procedural technicalities. In the case itself, between the bishop of Uzès and the prior of Gourdon, the delegates' question or difficulties centred upon procedure involving papal privileges in litigation. In this particular instance, the pope seems to have expressed already some impatience over the procedural interruption, as the letter followed that, the question at hand notwithstanding, 'it very much displeases us that in the cause itself your fraternity, just as the order of reason was prompting, has delayed proceeding, unless because you have wished to exhibit reverence to the apostolic see with due humility in its privileges. For, privileges do not always confer rights which are not held, but conserves those already held.' The case was thereby re-delegated without the option of further appeal for either party and with specific procedural instructions: as the bishop of Uzès had adduced in opposition to the other party an authentic letter of Innocent II declaring void all donations, concessions, and infeudations made 'uselessly' by a certain former bishop of Uzès, the judges were instructed not to be influenced by the instrument so long as it would be possible to be 'legitimately proved' that in the presence of that same pope the same former bishop had made restitution of and donated fifteen churches to the prior of Gourdon which was afterwards confirmed with the privilege of the same pope; for, that bishop had 'not illegally given that which was his own, but restored that which he acknowledged to belong to another.' Lastly, as it was suggested to the pope from one of the privileges of the bishop that that particular privilege may have been petitioned for from the pope only after the current controversy had been set in motion, if such should prove to be true, the judges were instructed not to allow that instrument either to 'diminish nor retard the justice of the opposing party.'[1] The petitioning for and use of papal privileges certainly complicated judicial procedure in the provinces. In this cause, however, the curia seems to have been fairly definite with regard to how such cases and their evidence should proceed: the terms of older or preceding privileges took precedence over subsequent ones in the case of potential conflicts of interest; while it was hinted that the purposeful petitioning for contrary or conflicting and thus fraudulent privileges for use in litigation was regarded as an act of dishonest litigation. This degree of detail, however, was by and large exceptional.

Similarly, a lack of a systematised procedure was reflected in chancery diplomatics, in terms of procedure for drafting letters, including not only those so-called 'rescripts' but all letters addressing various causes, *negotia*, and granting various confirmations: to some extent most

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[1] *EPRI*, no. 213 (JL, 9733).

documents seem to have been drafted for their particular purpose.[1] Thus, while there was also increasing standardisation, with mounting evidence of stock clauses, formulae, structures, templates, there does not appear to have been in existence as yet large classes of simple form letters, to which the pertinent personal information would be simply appended. Most exceptional were the privileges of protection which, by 1143, had largely taken on something approaching stereotyped forms, or formulae, so that the somewhat haphazard privileges of the late eleventh and early twelfth centuries had become consistently disparate, with few exceptions, from all other papal 'letters.' Otherwise, for specific trial proceedings at the curia, we are fortunate to have in existence, from the archives of Huesca, a 'protocol' of proceedings in a case conducted in early 1145 between the bishops of Huesca and Roda over several disputed churches.[2] This particular document is significant not only in the richness of detail it provided for the processes of litigation at the curia, but also because it was written from the perspective of an outside observer, and, perhaps more especially, because the actual proceedings of the case transpired during a pontifical succession and a unique episode in papal temporal history. Accordingly, it deserves acute attention.

To begin with, the protocol itself opened with a roll-call of the participants in the case and, significantly, a brief narrative of the accompanying political circumstances. In 'the first year of the pontificate of the lord pope Lucius II,' it began, the bishop of Huesca, together with his archdeacon, a certain *magister*, Durand, and a chaplain of his church went to Rome and lodged a complaint against the bishop of Roda through the same *Magister* Durand, and in the immediate presence of the pope. Lucius II, however, being infirm, it was reported, ordered the 'bishops and cardinals' who had turned aside with him to the church of S. Giorgio in Clivo Scauri in retreat from the 'sedition' of the Roman populace to hear the case. In fact, it is known from other sources that Lucius and his cardinals had fled to the monastery of S. Giorgio in retreat after an unsuccessful siege, undertaken principally with Sicilian aid, against the Roman communal government on the Capitol. At the time Lucius lay on his death bed at S. Giorgio—according to one report the pope's infirmity was the result of a fatal blow to the head he had suffered in the course of personally leading the assault.[3] The case in question, therefore, had probably been

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[1] See, P. Herde, *Formularies*, 323; see also, J. Sayers, *Judges Delegate*, 11-12, and 12 n. 2; C.R. Cheney, *Medieval Chancery*, 33-34, P. Herde, *Beiträge*, ix; C.B. Bouchard, *Auxerre*, 60.

[2] PUS2, no. 46, which the editor described as a 'Protokoll der Verhandlungen in dem Prozess an der Kurie zwischen den Bischofen Dodo von Huesca und Wilhelm von Roda.' See also, for this cause, *PL*, Eugene III, no. 2; PUS2, no. 47, 48, 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934), 60 (JL, 9258). Cf., M. Horn, *Studien*, 166-74, esp. 168-70, for a description of the proceedings, as well as a general history of the case.

[3] On these events, see, Godfrey of Viterbo, *Pantheon*, 260-61; *LP*, 386; Otto of Freising, *Two Cities*, Bk. 7. XXXI. 331-32; *Annales Casinenses*, 310; Romuald of Salerno, *Chronicon*, 227-28; *Annales Ceccanenses*, 283; Falco of Benevento, *Chronicon*, 250; *Annales Cavenses*, 192; *PL*, Lucius II, no. 64, 83, 91, 92; JL, 8684; *PL*, Eugene III, no. 1; Mansi 21, 609; *APRI* 3, no. 63 (*IP* 1, 27/17; P-H *Iter*, 238; JL, 8711); *LC*, 330, *LC*, 428, no. 172 (*IP* 1, 191/1; JL, 8710).

initiated and delegated sometime during the first two weeks of February 1145. But despite the accompanying turmoil, as the protocol continued without further explanation, the bishops and cardinals, having received the commission of the pope, convened in the chapter-hall of the same monastery to continue proceedings. Straightaway, the bishop of Roda, thinking to forestall Huesca's plaint, as the Huescan narrator assumed, pre-emptively rose up and, through his own person, lodged his own plaint: that the church of Barbastro ought to be restored to him by the opposing bishop; and three more churches, Alquezar, Bielsa, and Gistain, all of which he presumably knew the bishop of Huesca to have sights upon as introduced in the course of their initial papal hearing, he wished to hold in quiet, according to his rights contained in muniments which he presently brandished in hand. Accordingly, then, the cardinals had been able to set up a makeshift tribunal within the confines of a Roman monastery—as the pope, now dying, and with pressing political matters at hand, had been compelled to delegate the cause outright—and the action was opened through the motion of a *magister*, whom both parties had apparently acquired or brought in tow. And the defendant objected straightaway to the plaintiff's initial action by introducing documentary evidence.

Accordingly, after the muniments of Roda were duly read and heard, the bishop of Huesca responded through the *magister* Durand that Barbastro had been restored to him by a mandate of Innocent II; and on the basis of that same authority, that Alquezar, Bielsa and Gistain ought to be restored likewise: 'in the audience of that great assembly,' the archdeacon of Huesca then solemnly read official letters (*praeceptoriae litterae*) to that effect. Significantly, therefore, the pleadings again proceeded through the agency of the party's own lawyer, the *magister*, and the archdeacon. Next, the court adjourned, reopening the following day, at which point the cardinals returned to the same chapter-hall and the opposing parties asked in turn for advocates: the bishop of Roda requested the cardinal-deacon John(3) Paparo of S. Adriano (1143-51) and the papal subdeacon Grecus (later cardinal-deacon of SS. Sergio e Bacco [1149]); and Huesca requested a *Magister* Hermann and a *Magister* John, the latter a clerk of the papal chancellor. 'And,' it was affirmed, 'because reason and custom demand it,' the requested advocates were duly granted to both parties. Roda then insisted through his advocates upon the restoration of Barbastro, and more so, that it ought to be taken at once in hand with the full right of proprietorship. Huesca meanwhile stood upon his claim that Innocent II had ordered four times through letters, which he duly presented to the court, its restoration in his favour. At an impasse, though both parties were willing to continue arguing the merits of their respective claims, for days on end if allowed, the narrator noted, Pope Lucius II died on 15 February 1145 in the same church of S. Giorgio. Thus, it was implied that it was not unusual for certain trials to last for many days. More importantly, the curia was not prepared to suspend or compromise the operation of its tribunal even in the midst of actual war and the most acute political turmoil, and all of the complicated procedures in the trial

thus far were able to proceed without the benefit of the presence or, presumably, the cognisance of the moribund pope.

Narrative detail was then provided by the protocol concerning the circumstances surrounding the immediate days following the death of the pope and the elevation of his successor, Eugene III. Scrupulous attention seems to have been paid to the validity of Eugene's elevation. In fact, according to the official papal biographer, on the very day of Lucius' death Eugene III was elected *ex insperato concorditer* by the cardinals in the monastery of S. Cesario in Palatio on the Via Appia, whither the cardinals, 'out of fear of the senators and *populus Romanus*, rising up in arms, convened as one; and having been conducted by escort to the Lateran Palace, he was placed on the apostolic see in accordance with the custom of the Church.' However, although the following day was a Sunday, and the elect 'was supposed to receive the rite of consecration at St. Peter's, just as the order of custom demands and as had been arranged, having learned beforehand the designs of the perverse senate, that they had arranged to refute his election with violence if necessary unless he would accede to their will and confirm for them with apostolic authority all which they had usurped, he left the City in the silence of the night [17 February] with a few brothers and retreated to the arc of Monticelli, into a safe haven.' Thereupon, having awaited all of the remaining cardinals 'who had been scattered about out of fear of the raging populace,' Eugene 'proceeded to the monastery of Farfa [18 February] with the household troops and received, with God the Author, the grace of consecration on the following Sunday and the fulness of his apostolate in accordance with the customs of the Church.'[1] Then, still 'to escape the fury of the Roman people,' the curia 'withdrew to various fortified places:' first to Narni, then to Orte and Civita Castellana.[2] Around Easter, the curia set up base at Viterbo, where it remained for the next eight months conducting a renewed military assault against the commune.[3]

These same events were reported similarly by the protocol of Huesca, which conveniently avoided, however, direct mention of the actual cause of the flight and the need to complete the solemnities of succession under the less than conventional circumstances. Rather, the author seems to have been careful to stress the canonicity of procedure in elevating the new pope as he ultimately presided over the further proceedings of the case.[4] In any event, some insight was further provided into the potential difficulty supplicants would have encountered in tracking down the curia in this period of its near-constant displacement. Both sides, as such, it was reported,

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[1] *LP*, 386.
[2] Otto of Freising, *Two Cities*, Bk. 7. XXXI. 331-32.
[3] For these events, see, *LP*, 386-87; Otto of Freising, *Two Cities*, Bk. 7. XXXI. 331-32; *HP*, 59-60; *Annales Casinenses*, 310; Romuald of Salerno, *Chronicon*, 228; Bernard of Clairvaux, *Letters*, no. 237 (B.S. James, no. 315), 243 (B.S. James, no. 319); *PL*, Eugene III, no. 1; Gerhoh of Reichersberg, *Epistolae*, no. 17, col. 564-570, here at, col. 568-69; on the movements of the curia during this time, see also, JL, 8714-8795.
[4] In fact the papal election decree of 1059 had allowed a pope to be consecrated outside the City in the unusual circumstances of war or other tumult; see, Gratian, *Decretum*, D. 16 c. 1.

travelled to the retreating new pope arriving at length at Narni—where the curia resided from 2 March through the middle of the month[1]—'so that they might hear a sentence from his mandate.' Thus, the parties had been compelled to tarry in central Italy already for some considerable time. At Narni, at length, the trial duly proceeded. In the presence of Eugene and 'the bishops and cardinals' the proceedings previously conducted at Rome were repeated in full by the parties' advocates and even 'more diligently examined by the lord pope and bishops and cardinals sitting together in session.' Upon examination, the pope, 'sympathising,' it was said, 'with the labours of both churches and parties, and desiring to compose a peace between them,' summoned the parties together in hopes of composing a peace and concord. The prospect was received warmly by both sides; and Eugene happily committed the cause to Cardinal-bishop Conrad of Sabina, the cardinal-priests Gilbert and Guido de Summa, and the cardinal-deacons Gregory, Guido(3) Moricot, and Octavian. That the parties sought a sentence from 'his mandate' indicated seemingly the value placed by potential litigants upon papal orders and letters. Nevertheless, both parties were content to have their cause delegated to a mixed cardinal-tribunal. And while such a procedure of delegation would have been natural given the newness of the pope, especially in light of the fact that the cardinals had reportedly already presided over the initial proceedings, under Lucius II, and were thus already well acquainted, as it was, judicial delegation to members of the cardinalate was already becoming a fairly standard system of procedure of the papal tribunal generally.

At that point, the appointed or delegated judges re-examined the muniments of both parties. But the party of Roda had put forth a decree of Urban II which the commission 'found to be a most manifest forgery'—to be sure, it was noted, they were aggrieved no more for the fact of the forgery than they celebrated for the revelation of the truth. They then reported their discovery alone to the 'discreet ear' of the pope; but Eugene, it was suggested, had already divined as much (*ex insperato*), and, 'led by the zeal of God,' he showed the discovered forgery to the remaining assembled bishops and cardinals, including visiting bishops,[2] and ordered a seat to be prepared for him in the middle of the church of S. Giovenale which he then consecrated. Indeed, it is interesting that it should have been explained that the cardinals both grieved over the discovery of the forgery and at the same time celebrated a victory for the truth—in other words, congratulating their own investigative and diplomatic skill. Therefore, the discovery of the forgery was only discreetly communicated to the pope, who discreetly communicated the discovery to the remaining assembly. And curiously, apparently in an effort to salt the cause of his own church, and especially in light of later developments, the ostensibly pro-Huescan author seems to have intimated that Eugene had had apparently some intuitive or even mystical foreknowledge of the

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[1] See, JL, 8714-8720.

[2] The protocol closed by naming those visiting bishops 'present at this definition or sentence:' the archbishop of Sens and the bishops of Lisieux, Bayeux, Liège, Orléans, and Zaragoza.

fraud; and the pope apparently commemorated the event by consecrating the courtroom. In any event, in that same church, 'with prudent counsel presiding,' the various muniments of the respective parties were read aloud from a height through various persons 'in the hearing of all sitting together:' first, for the church of Huesca, a statute of a King Ramiro [I of Aragon] and privileges of Popes Gregory VII and Urban II; then, for Roda, the document 'which they were claiming to be a decree of Pope Urban [II],' along with two further privileges of Paschal II 'which appeared to be dependent upon that decree of Pope Urban.'

Roda's party had therefore apparently been allowed to adduce its own evidence even though the assembly was privy to his fraud. And 'at length, truly, the lord pope, with the pontifical judgement (*censura*) and governorship, having taken the counsel of the fathers sitting together,' gave a definite sentence. The narrator then quoted the pope's verbal verdict: "We, most esteemed brothers, have diligently heard the allegations of Huesca and Roda with regard to their cause and we have freely wished to compose a peace between them; and since we have received the assent of both parties in our hand, we committed it to our brothers to arrange a peace."' However, the new pope informed, '"our brothers, without fraud, as certain malevolent men believe, but with the zeal of pious charity seeking the basis of truth, have diligently inquired into and thoroughly and fairly examined then and there the muniments. Among which, that which those of Roda were claiming to be a decree of Pope Urban [II] they perceived through a concealed proof to be most false, as you are able to see."' And thus, 'since that decree would have been shown to archbishops, bishops, abbots, and most religious men, and determined and proved most false by all of them no less in the seal than in the letters, the decree itself and the privileges of Pope Paschal [II], which were seen to depend knowingly upon that decree, he condemned with a pontifical judgement, saying that the bishop of Roda and his church ought not to rejoice on the basis of a forgery, but ought to be punished by canonical law.' The pope thereby, 'with the entire assembly approving the sentence,' personally invested the bishop of Huesca *per baculum* with the disputed churches with both the rights of possession and the right of proprietorship, along with all of their appurtenances. And while he also ordered the party of Roda forever to keep its silence over the dispute and its claims, it was nevertheless subsequently reported that Eugene later bound the bishop of Roda and the clerics of his church with a sentence of excommunication both for contemning further papal summonses and knowingly clinging fast to the same forgery—he was even caught attempting to tamper with the papal registers. Significantly, however, neither the protocol itself nor any of the extant papal letters issued concerning the case referred to the use of or reference to any papal register in the actual proceedings of the trial. Rather, each merely indicated that all papal documents used in procedure had been entered or adduced by the parties themselves.[1]

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[1] See, ch. 7.3.

In sum, this protocol, substantiated in broad details by at least seven extant papal letters issued in the course of Eugene's pontificate,[1] represents the most comprehensive and sustained insight into judicial procedure at the curia in an actual trial, and accordingly revealed certain noteworthy aspects of procedure ca. 1145: the use of legal experts by the parties and the curia, including the delegation as advocates of members of the curia to both parties, including a subdeacon and chancery clerk; an initial hearing in the pope's own presence; the delegation of the handling of the cause to the cardinals; the mostly rational procedure in examination; the production of documents, including the use of older papal privileges, as the primary evidence, all of which were entered, it is assumed, solely from the records of the parties themselves; and public airing, presided over personally by the pope in a semi-public assembly, including public papal pronouncement of judgement. Furthermore, the parties apparently had, under the circumstances, to tarry at or around Rome at length before obtaining a re-hearing under Eugene III—this included the probable necessity of travelling about the Patrimony in order merely to track down the curia—and the new pope, as a result, it was noted, 'sympathised with the labours of both churches and parties.' In this context the trial also demonstrated the procedure of a case which bridged two consecutive pontificates. As a result, there was a slight cessation of proceedings, although both parties thought that the new pope, upon finding him, might simply offer a sentence to their controversy. Rather, the evidence was re-presented in the presence of the pope and his cardinals, who had already conducted all proceedings hitherto.

But the new pope himself was unacquainted with the case, which would suggest that any cause could not proceed to the point of resolution without the current pope's cognisance. But Eugene was given to understand the nature and extent of the proceedings hitherto, and was thus content merely to re-delegate the cause, this time to a specified delegation of cardinals, for a definite resolution. Thus, there was evidenced both discontinuity and definite continuity in the procedure of a case which bridged pontificates. Most importantly, perhaps, the imperative which the curia placed upon the operation of its tribunal and systems of ecclesiastical justice was emphasised by the fact that, although the case itself had commenced under Lucius II as he lay dying in retreat after a failed assault against the communal government of Rome, it was convened under Eugene III as he himself flitted about the Patrimony from one stronghold to another under the armed threats of the commune. At the same time, the critical value which the parties themselves placed upon papal justice was evidenced by the fact that they risked peril by venturing into a city in arms, in the midst of civil war, in order to obtain a papal hearing and judgement. And yet, despite the tumultuous and dangerous surrounding circumstances, the overall procedure at the curia appears to have remained highly formal, impersonal, and professionalised—far more so than

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[1] *PL*, Eugene III, no. 2; PUS2, no. 47, 48, 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934), 60 (JL, 9258).

it appears to have been only a few short years earlier as described by the procedural account of Abbot Hariulf of Oudenbourg's experiences at the curia in 1141.[1]

The papal record of the case also demonstrates what must have been considered a definite value of the papal systems of justice in this period in the operations of its writing office, which often sent out letters to multiple parties in the effort to facilitate enforcement. Thus, in this case involving two bishops as parties, at least three different papal letters were sent out on the same day in mid-March: to the clergy and populace of Bielsa, Alquezar, and Barbastro; to the count of Barcelona; and to the bishop of Huesca himself and his successors. All recounted briefly the terms of the case, noting that the three condemned 'writings,' that under Urban II's name and the two genuine documents of Paschal II which proceeded from the 'forgery,' had been torn up in the pope's presence and that of his brethren; while the perpetrators of the fraud, it was noted, including the bishop of Roda, had been punished 'with a due punishment.'[2] Be that as it may, the case also pointed out the problem, interrelated to fraud, of potential resistance to papal judgements and authority and the difficulty of enforcement. Thus, over a year later in June 1146 Eugene would write again, in separate letters, to the count of Barcelona, the archbishop of Tarragona, and the bishop of Roda, as Huesca had re-complained to the pope that 'Roda, disobeying us, is being rebellious and contemns to fulfil the restitution in accordance with our mandate.'[3] To Roda, the pope wrote that it 'ought not to have slipped from your memory just how kindly, how mercifully, we relaxed the sentence promulgated against you on account of the false writings which you had presented to us. Truly, you, having been turned around into a vicious circle, abuse our patience and that of your mother the holy Roman Church and presumptuously, just as we have accepted, disparage us, by disobeying our mandates and being rebellious.'[4] The bishop was threatened to comply within three months or else be suspended from the episcopal office with the contested churches placed under interdict. The threat went unheeded. And at the end of April 1148 Eugene would again write to the bishop: 'We are amazed and gravely suffer that, after the judgement given by us and after the reception of our mandate, as much through letters as *vive voce*, you have by no means feared to retain with temerarious audacity the churches of Biesla and Gistain.' Again, however, the pope merely ordered him to restore the same churches to the bishop and church of Huesca, 'with all elusive delay and subterfuge removed,' otherwise, 'you will see this insult itself severely turned back against you.'[5]

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[1] See, *Der Bericht des Abtes Hariulf von Oudenburg*, 101-15.
[2] PUS2, no. 47, 48; *PL*, Eugene III, no. 2.
[3] PUS2, no. 54 (JL, 8936), 55 (JL, 8935).
[4] PUS2, no. 56 (JL, 8934).
[5] *Alioquin hoc ipsum in te noveris graviter retorquendum.* PUS2, no. 60 (JL, 9258).

4 *PAPAL JUSTICE AND THE CARDINALATE*

In the course of the thirteenth century permanent standing tribunal offices came into operation in the curia under the auspices of the chancery, hearing lesser causes and, more importantly, acting as a clearing house for all petitions or plaints: the *audientia causarum*, or *audientia sacri palatii*, which later developed into the *sacra Romana rota*; and the *audientia publica*, later called the *audientia litterarum contradictarum*. Within these departments petitions could be aired or expedited, or cases heard or referred to judges delegate through rescripts, or reserved, in more important cases, and referred to the pope's own person. Most importantly, it appears that under the operation of these offices a good many if not most causes were increasingly being handled or delegated without direct papal involvement.[1] In the mid-twelfth century these departments were still in the future; and the papal judiciary and chancery still operated and proceeded in many circumstances in an *ad hoc* if not improvisational fashion, but with evidence of increasing specialisation and use of at least broad standard methods of procedure. Thus, already by the second quarter of the twelfth century, owing probably to the growth of papal business as well as other historical circumstances, the cardinals were increasingly sharing or participating in the pope's systems of justice.[2] This was expressed most clearly in the letters through the inclusion of the phrase, upon pronouncing judgement, *communicato fratrum nostrorum consilio* and its variants, which occurred in at least fifty-five papal letters of the period 1143-53, at least forty-four (eighty percent) of which concerned clerical controversies.[3]

In total, of those letters which made specific reference to 'cardinals' in the letters of 1143-

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[1] On this, see, P. Herde, Audientia litterarum contradictarum: *Untersuchungen über die päpstlichen Justizbriefe und die päpstliche Delegationsgerichtsbarkeit vom 13. bis zum Beginn des 16. Jahrhunderts* (Bibliothek des Deutschen Historischen Instituts in Rom 31-32: Tübingen, 1970); P. Herde, *Beiträge*, 125-242; P. Herde, *Formularies*, 323-45; K.W. Nörr, *Jurisprudence*, 331-36; J. Sayers, *Judges Delegate*, 11-25, 54-58; G. Barraclough, '*Audientia litterarum contradictarum*,' *Dictionnaire de droit canonique* 1 (Paris, 1935-), 1397-99.; G. Barraclough, 'The Chancery Ordinance of Nicholas III: A Study of the Sources,' *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 25 (1933-34), 192-250; I.S. Robinson, *Papacy*, 106, 192.

[2] See, ch. 4.2.

[3] *PL*, Lucius II, no. 24, 25, 39, 40, 41, 43; *PL*, Eugene III, no. 2, 6, 25, 76, 82, 101, 185, 186, 187, 152, 201, 253, 322, 324, 395, 449, 458, 512; *APRI* 2, no. 396 (JL, 9396); *APRI* 3, no. 71 (JL, 8830), 80 (JL, 8960); *EPRI*, no. 207 (JL, 9632); PUE3, no. 62; PUF8, 41 (*PL*, Eugene III, no. 547; JL, 9661); PUS2, no. 47, 48, 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934), 67, 68; PUP, no. 51, 52; PUKHL, no. 51; Nachträge zu den PU in Italiens 2, no. 9 (*IP* 3, 179/15; JL, 8497); PU in Pisa, no. 4 (*IP* 5, 62/213); PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); PU in Padova, no. 3 (*IP* 7/1, 315/6).

53,[1] over sixty percent concerned clerical controversies. Furthermore, at least thirty-eight different cardinals active between 1143 and 1153 can be identified in the papal letters concerning clerical *controversiae*: eighty-six percent of the total cardinals identified in the letters of this period; fifty-six to fifty-eight percent of the total known cardinals of this period.[2] In most cases, however, because of the nature of the rhetoric, it is impossible to adjudge when the pope actually participated in either the hearing or resolution of a cause, beyond his mere confirmation or subscription. What can be safely concluded is that one or more members of the cardinalate probably participated in the proceedings of practically every juridical cause pleaded at the curia in this period, whether that participation included independent or delegated adjudication or the provision of mere 'counsel.'

4.2 THE CARDINALATE AND COUNSEL

In practice, in the daily routine of papal business, the role and authority of the cardinalate was exercised regularly in the right of counsel. During the twelfth century, it has been said, a new institution known as 'consistory' came into being as an assembly of the pope and cardinals which heard and decided the greater causes and other issues affecting the Roman Church, with the cardinals, as the pope's advisors, conferring advice upon him. Although originally the term *consistorium*, when it first appeared in the papal letters of the reform period, connoted the actual place of proceedings or counsel, specifically the Lateran Palace, it had, by the mid-twelfth century, it seems, come to signify the processes themselves, which were conducted *in consistorio*. Nevertheless, it has been said that this institution, as a process, appears to have been in existence and operation nearly half a century before the actual name 'consistory' became attached to it. For J. Sydow, 'it is possible to speak of a consistory when the pope, together with the cardinals, considers and decides matters which were usually reserved to the synod.'[3]

Under Gregory VII the papacy's judicial business was still dealt with in the provincial

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[1] That is, not including those letters which merely or broadly referred to 'our brothers,' as in the clause *fratrum nostrorum consilio* and the like—only when 'cardinals' specifically or specific cardinals were mentioned; also, not including subscriptions or *datum* or *signum* clauses—only the substantive parts of the letter.

[2] See, ch. 2.1 and Appendix 2.

[3] J. Sydow, 'Untersuchungen zur kurialen Verwaltungsgeschichte im Zeitalter des Reformpapsttums,' *Deutsches Archiv* 11 (1954-55), 18-73, here at, 52, translated by, I.S. Robinson, *Papacy*, 99. For this and the following, see, J. Sydow, 'Il "*concistorium*" dopo lo scisma del 1130,' *Rivista di storia della chiesa in Italia* 9 (1955), 165-76; J. Sydow, *Untersuchungen zur kurialen Verwaltungsgeschichte*, 52-55, 63-73; W. Maleczek, *Papst und Kardinalskolleg*, 297-324, esp. 297-312; I.S. Robinson, *Papacy*, 90-120, 123-24, 139, 145, 181, 188-93, 198-99; I.S. Robinson, *Institutions*, 423-29; N. Zacour, *Cardinals' View*, 414-30, 435-38; B. Tierney, *Foundations*, 68-84; K. Pennington, *Papal Monarchy*, 64-74; W. Ullmann, *Growth*, 319-31; C.R. Cheney, *Becket*, 52; J. Sayers, *Judges Delegate*, 14-15; G. Barraclough, *Papacy*, 99-100; U.-R. Blumenthal, *Opposition to Pope Paschal II*, 82-98.

synod of the bishop of Rome, where cases arising in the Roman ecclesiastical province were judged by the suburbican bishops. For the Church at large, however, Gregory relied on his cardinal-bishops as legates rather than as advisors. Victor III, his short-lived successor, appears to have altered this 'policy' and relied on the counsel of all of his cardinals. This practice, which may have been forced upon Victor III by his ill-health and the general weakness of his position as pope, continued nonetheless under the more prosperous pontificate of Urban II. Thus, in 1099 the earliest satire oppugning Roman corruption described this pope as always 'attended by his most well fed cardinals,' his indispensable companions.[1] On account of exile, in fact, Urban was unable to summon the traditional Roman synod with regularity, and thus was compelled to settle most important causes—the *causae maiores*—which under Gregory VII would have been decided in a papal synod, only with the participation of his cardinals. Meanwhile, the papal synod became an instrument of reform, developing into something of a general council legislating for all of Christendom. Its scale and complexity as such prevented its meeting as regularly as the old papal synod. And as the amount of judicial cases heard by the pope and cardinals grew, a more intimate gathering became expedient in substitution of the more numerous and miscellaneous synod, so that another institution, which eventually took the name of *consistorium*, was developed to deal with the routine business of the synod. The struggles of Paschal II, including especially the so-called 'humiliation of Sutri' (1111), meant that more and more power in the papal government accrued to the cardinalate, which thereafter consolidated its right to elect the pope and to subscribe all papal privileges; furthermore, it increasingly became assumed that the pope would reach important decisions and settle important causes only after consultation with the cardinals. By these processes, from the turn of the century, the cardinals increasingly became indispensable to the pope as judges and counsellors. In 1100, for example, two cardinal-priests, legates in France, addressed Paschal II observing that it belonged to '*our* governance (*nostrum moderamen*) to provide for all of the churches'[2]—throughout the period 1143-53 the use of the first person plural personal pronoun remained consistent not only in all chancery documentation but all letters addressed by members of the cardinalate as well.

Under Innocent II the role of the cardinalate as advisors and in the papal tribunal probably continued to grow both as a result of an even greater influx of judicial business reaching the curia and the emergence of lawyers in the college, as well as the general growth of the influence of the college—an influence and role which appears to have increased under the exigencies of the papal schism of 1130 and the concomitant reliance on the cardinals for the support and legitimacy which they conferred upon the candidacies of contending popes. In this way, the effects of the schism of

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[1] *Tractatus Garsiae Tholetani canonici de Albino et Rufino*, *MGH SS Libelli de lite* 2, 423-35.
[2] Stephen of Cîteaux, *Prima nascentis coenobii et ordinis Cisterciensis historia vulgo inscripta exordium coenobii et ordinis Cisterciensis*, *PL* 166, ch. 11, col. 1506.

1130 have been thought to have enhanced the importance of the 'consistory' as an instrument of papal government: both Popes Innocent II and Anacletus II frequently proclaimed in their documents that papal decisions had been reached with the 'counsel' of their brethren, the cardinals. And at the council of Council of Reims (October 1131), the cardinals presided jointly with the pope over the public proceedings and were delegated several causes referred to the council.[1] At the same time, that council proceeded to excommunicate not only the antipope Anacletus II but all of his 'schismatic' cardinals. By the Second Lateran Council in 1139, the role of Innocent's cardinalate only seems to have increased, despite the end of the schism, as the pope judged or settled several more important cases referred to that council with the advice of his cardinals. Furthermore, while during the 1120s and early 1130s cardinals continued to subscribe papal documents in conjunction with other prelates, during Innocent II's long sojourn in Pisa, between 1133 and 1137, this changed, and most documents came to be subscribed exclusively by cardinals. In the same period Innocent's letters describing that decisions had been reached 'with counsel' ceased largely to imply, as they commonly did in the first years of his pontificate, the participation of both cardinals and other prelates, but now almost exclusively the 'counsel' of the cardinals.

The importance of the office of chancellor during Innocent II's pontificate, under the direction of the highly influential Cardinal-deacon Haimeric of S. Maria nuova (1123-41), also seems to have increased its direct involvement in the judicial business of the pope. Haimeric himself was said by a contemporary to be 'most upright, and learned chiefly in ecclesiastical laws and palace institutions;' while a litigant seeking his advice and support was quoted as saying to the chancellor that 'although the examination of all causes should fall to the lord pope, the chariot of Israel and its charioting is set upon you by rights, since your industry arranges all things, composing the minor and directing the greater.'[2] Both of these quotations are taken from the rare detailed procedural account of Abbot Hariulf of Oudenbourg's experience as a litigant at the papal court in 1141. By and large this account demonstrated, by that point in time, the pervasive and predominant role of the cardinals, especially the chancellor, throughout every step of the process of litigating at the curia: the abbot was initially coached by the chancellor on how to comport himself before the pope—this experience would be echoed by Abbot Wibald of Stavelot's envoys to the curia under Eugene III's future chancellor Guido(3) Moricot[3]—and introduced into the 'consistory' by him. Then, after tarrying for days in anticipation of a formal hearing after his brief initial one, the abbot availed at length to obtain a definite appointment only through the intervention of several cardinals. More importantly, the cardinals' consultation was exercised

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[1] See also, *PL*, Innocent II, no. 46, col. 96 (JL, 7475).
[2] *Der Bericht des Abtes Hariulf von Oudenburg*, 101.
[3] Wibald, no. 46; see also, Wibald, no. 47.

throughout the formal hearing, and it was the chancellor who was responsible for arranging judges delegate after it was deemed that the cause should be delegated. And finally, it was through the insistent urging of the cardinals, who believed in the abbot's justice, that the pope was persuaded to forego delegation and judge at length in the abbot's favour.[1]

These things not withstanding, the fact is that the sense of the term *consistorium*, as in the phrase *in consistorio*, especially in the context of judicial procedure, does not seem to have been used with any precision or consistency throughout the twelfth century—it can be found only sporadically in the texts of the same period, and was not probably used as any kind of technical term. For W. Maleczek, while the basic advisory function of the cardinalate had been established by the early 1130s, this consultative process of the cardinals was different or separate from the 'consistory' *per se*, which only took on a technical meaning in the pontificate of Innocent III, when it definitely came to connote, in contrast to any private advisory session between the pope and cardinals, a formal public tribunal presided over by the pope. According to his *Gesta*, 'three times a week [Innocent III] would publicly hold a solemn consistory, which hitherto had fallen into desuetude.'[2] In fact, for Abbot Hariulf of Oudenbourg, who visited the curia in 1141, the term *consistorium*—which does not seem to have appeared even once in the papal documents of Innocent II—denoted a room in the Lateran Palace which served as the papal tribunal. According to his account, the abbot was led by hand by the chancellor 'to the consistory of the palace, where the lord pope, with the cardinals at his right, sat for trial; truly, the more noble of the Romans, with curled hair and clad in silks, stood and sat about his feet.' In that setting, the abbot put forth his cause.[3] Later, for John of Salisbury, who has been said to have been the first historian regularly to make use of the term *consistorium*, it seems to have implied, ambiguously, a semi-private or semi-public judicial hearing presided over by the pope in the presence of cardinals and others—in other words, at least, an act or process, and not a physical space.[4] And later, for the papal historian and chamberlain Cardinal Boso, it would in fact imply a public hearing, in distinct contrast to private deliberations of pope and cardinals.[5]

In the papal documents of 1143-53 the term *consistorium* appeared only once, and seems to have signified a 'public' gathering.[6] In May 1147 Eugene III wrote to the bishops of Durham and Carlisle and the deacon and canons of York: 'It is manifest that W[illiam], the former so-called archbishop of York, has been consecrated against the sentence of [Innocent II], which he

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[1] *Der Bericht des Abtes Hariulf von Oudenburg*, 101-15.
[2] *Gesta Innocentii III*, *PL* 214, ch. 41, col. 80-81; W. Maleczek, *Papst und Kardinalskolleg*, 297-02.
[3] *Der Bericht des Abtes Hariulf von Oudenburg*, 102.
[4] *HP*, 43-45, 73-75, 80-82 (*IP* 8, *46/175; *IP* 9, *172/1).
[5] *LP*, 425; also, I.S. Robinson, *Papacy*, 113-15, 356-60; I.S. Robinson, *Institutions*, 429.
[6] For the very few occurrences of the term in the papal documents of Adrian IV to Celestine III, and the more frequent occurrence in non-papal sources, see, W. Maleczek, *Papst und Kardinalskolleg*, 300-01.

himself with the common counsel of the brethren *in consistory publicly* promulgated and confirmed with the page of his own writing.'[1] Otherwise, two further letters concerning the metropolitan controversy between Tours and Dôl noted ambiguously that that cause was either considered or sentence was delivered, under Lucius II, *in concessus* of the cardinals, other visiting prelates, and several Roman nobles.[2] In fact, the papal sources of the period 1143-53 generally gave no direct indication that cases were even being either pleaded, considered, or decided 'privately' or not. Rather, the protocol of Huesca[3] seems to have indicated that hearings or trials were something of a mixed affair, including both open or public proceedings, at least as far as important visiting clerics, as well as the retinues of parties and minor curial officials, were concerned, along with closed or private investigative and consultative ones. But whether or not any separate or private hearing or consultation of pope and cardinals took place in the course of proceedings as a matter of routine procedure was not indicated in the sources of the period. And as noted, the term 'consistory' was not once used in reference to contemporary events in the letters of the period, nor was it used at all in the protocol of Huesca. In the end, the term 'consistory' itself seems to have had no formal or legal significance as far as the curia was concerned. Nevertheless, it does seem to have been implied from the context of the letters that, around mid-century, as a matter of routine, judicial hearings or trials, whether 'private' or not, were presided over by the pope or cardinals and attended by some assembly of cardinals and others: 'On account of the controversy...you and they, on the terminus fixed for you, convened in our presence and with the defence (*patrocinium*) of the advocates of both parties put forth the cause itself in our presence and that of our brethren.'[4] After this, some form of consultation between pope and cardinals, whether or not always privately or separately, probably ensued, through which 'counsel' was given to the pope by which decisions were made.

In sum, the relevance of the actual term *consistorium* in judicial proceedings notwithstanding, it would appear to be a safe supposition that the rise of the cardinals as advisors to the pope had progressed sufficiently by the mid-twelfth century so that most if not all decisions were reached, or cases settled, with some consultation and recommendation, if not actual consent, on the part of various cardinals. In this sense, Bernard of Clairvaux advised Eugene III 'to investigate personally with care everything which must be done and discuss it with those who love you;' 'do all things with counsel' and afterwards 'you will not be sorry.'[5] John of Salisbury in fact affirmed that when in April 1148 Eugene was approached by the congregation of Clairvaux, led by

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[1] PUE3, no. 62.
[2] *PL*, Lucius II, no. 40. And later, under Eugene III, referring to those proceedings under Lucius, *in consessus*: *PL*, Eugene III, no. 152.
[3] PUS2, no. 46; see above, ch. 3.5.
[4] *APRI* 3, no. 75 (JL, 8916).
[5] *De consideratione*, Bk. 4. IV. 11 (122-23).

Abbot Bernard, to restore a deposed ex-bishop to his priestly rank, the pope merely deferred the matter to his cardinals 'as he was always wont.'[1] Yet, if this had indeed become a matter of routine, this would seemingly have proceeded far more from practical considerations rather than any constitutional principle as the judicial business of the curia continued to mount, and as the nature of causes expanded in diversity and the system itself in sophistication. At the same time, the evidence by and large would seem to support the observation that from the beginning of Eugene III's pontificate it was exceptional when reference to the pope taking advice implied prelates other than cardinals.[2]

In specific examples from the papal letters of the period 1143-53, the premium placed upon *consilium* was demonstrated early on, under Lucius II, in a letter of May 1144 to the bishop of St. David's (Menevia) in Wales. The pope opened the letter by informing the bishop that he had received his letter and was diligently attending to his petition regarding 'the dignity of his church'—presumably, the bishop's petition that his see be raised to archiepiscopal status. However, the letter continued, 'since with sins bursting forth and the wickedness of wicked men abounding the dignity of the same church has from a long time past been alienated from itself and translated to other churches, we do not have a certain counsel (*consilium*) whereby to enact anything at present.' Still, the pope was 'arranging through the grace of God to send soon to those parts for the sake of the various business of the churches our legates, to whom you should be solicitous to indicate the same cause through old men and authentic writings of your church. And we, having held a more fully developed counsel, might enact through them, having more fully learned the truth, that which must be enacted to the honour of God.'[3] In ca. 1145-46 Eugene III wrote to the bishop of Arezzo concerning his controversy with a nobleman over a certain *castrum*, declaring that the cause had been 'diligently heard as much through us as through our brothers, and with the counsel which has been communicated with them, having given to both parties the option of a concord, we have concluded the concord itself with this order.' Indeed, the phrasing itself suggested that, in this particular case, counsel and adjudication had gone hand in hand. Rather, the complexity of the terms of the settlement would suggest that the pope had not merely taken advice but relied upon a coordinated and subtle decision: the nobleman in question promised to refute his claim to the *castrum* along with his suit against the bishop over injuries inflicted in the course of the seizure of the castle; he also provided guarantees that his relatives would supply similar promises. In return the bishop agreed to pay war indemnities to the nobleman: eighteen pounds in two nine-pound instalments on specified dates; and prorated values on the property lost in the

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[1] *HP*, 43.
[2] See, W. Maleczek, *Papst und Kardinalskolleg*, 307-08; also, N. Zacour, *Cardinals' View*, 415 and n. 11; I.S. Robinson, *Institutions*, 427.
[3] *PL*, Lucius II, no. 39; see also, *PL*, Eugene III, no. 201.

capture of the *castrum* which the bishop should not be able to restore.[1]

As in this case, the consultative or adjudicatory participation of the cardinalate in the business and especially judicial business of the pope was frequently expressed through the regular inclusion in enacting clauses of the phrase *communicato fratrum nostrorum consilio*[2] and its variants,[3] which occurred in at least fifty-five[4] extant papal letters under Celestine II, Lucius II, and Eugene III.[5] The use of such formulae had been presaged under Urban II, who referred in his letters, especially with regard to synodal decisions, to several *causae maiores* decided 'with our brethren present' or with their 'counsel.'[6] Under Paschal II, according to W. Maleczek, reference in the letters to causes settled or decided with the cardinal's 'counsel' or participation already began to refer in a majority of cases to the counsel or participation of cardinals alone, although under Calixtus II this trend was reversed, with visiting prelates more often than not participating along with the cardinals. This seems to have remained the same into the first few years of Innocent II's pontificate. But from Innocent's long sojourn in Pisa, beginning in November 1133, reference to the counsel or participation in causes of the cardinals alone became predominant. In total, Maleczek ascertained twelve letters of Innocent II in which the joint counsel or participation of cardinals and 'other prelates' was implied, compared to eighteen letters for the cardinals alone.[7] It was also during this time, he noted, that the formula itself *fratrum nostrorum consilio* became standard as a reflection of this change. Lastly, by Eugene III's pontificate, Maleczek determined, such clauses had come to refer almost exclusively to the cardinals, so that by the end of the

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[1] *APRI* 3, no. 70 (JL, 8826).

[2] *PL*, Lucius II, no. 25, 40; *PL*, Eugene III, no. 96, 101, 126, 152 ('the counsel of his [Lucius II's] brethren'), 201, 253, 322, 324, 395, 449, 504, 512; *IP* 1, *55/7; *APRI* 3, no. 71 (JL, 8830), 80 (JL, 8960); PUE2, no. 43; PUF6, no. 61; PUF8, 41 (*PL*, Eugene III, no. 547; JL, 9661); PUS2, no. 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934), 67, 68; PUP, no. 51, 52; Nachträge zu den PU in Italiens 2, no. 9 (*IP* 3, 179/15; JL, 8497); PU in Pisa, no. 4 (*IP* 5, 62/213).

[3] *PL*, Lucius II, no. 24, 39, 41, 43; *PL*, Eugene III, no. 2, 6, 25, 76, 82, 93 (*Bambergensia*, no. 35; JL, 8882), 185, 186, 187, 316, 458; *EPRI*, no. 207 (JL, 9632); *APRI* 2, no. 396 (JL, 9396); *APRI* 3, no. 70 (JL, 8826); PUE3, no. 62; PUKHL, no. 51; PUS2, no. 47, 48; PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); PU in Campanien, no. 10 (*IP* 2, 147/4); PU in Padova, no. 3 (*IP* 7/1, 315/6); Nachträge zu den römischen Berichten, no. 8 (*IP* 1, 141/31); see also, *PL*, Eugene III, no. 284, 382; PUE2, no. 40 (JL, 8686); PUF1, no. 51 (JL, 9171).

[4] Cf., W. Maleczek, *Papst und Kardinalskolleg*, 308 n. 56, who counted thirty-nine such documents for Celestine II, Lucius II, and Eugene III. While Maleczek consistently noted that he based his findings on the incidence of clauses stipulating *consilium* in the papal letters, in fact he also included those in which the mere 'presence' of cardinals was indicated. For present purposes, I have only included those letters which specifically stated that 'counsel' had been given, or else unequivocally implied the same.

[5] On this phrase and other forms of 'counsel' in the twelfth century, see esp., W. Maleczek, *Papst und Kardinalskolleg*, 297-324, esp. 302-12; also, N. Zacour, *Cardinals' View*, 421-27; I.S. Robinson, *Institutions*, 427-29.

[6] See, e.g., *PL*, Urban II, no. 100, col. 375-76 (JL, 5505), no. 113, col. 385-87, here at, col. 386 (JL, 5519), no. 292, col. 543-44 (JL, 5788); also, JL, 5446, 5449, 5464, 5470, 5561, 5692, 5716, cited by, W. Maleczek, *Papst und Kardinalskolleg*, 307 n. 51.

[7] See, W. Maleczek, *Papst und Kardinalskolleg*, 308 n. 54, for Innocent II's letters.

century cardinals alone were always referred to as the pope's 'advisors.'[1]

It has been emphasised further that in the course of the twelfth century an increasingly broad range of business was decided *fratrum nostrorum consilio*.[2] In fact, in the period 1143-53, of the at least fifty-five letters in which the phrase and its variants occurred at least forty-four (eighty percent) concerned clerical *controversiae* of a greater or lesser nature.[3] Two others concerned controversies between clerics and laymen: between an abbey and a nobleman over a certain *villa*;[4] and between a bishop and nobleman over a certain *castrum*;[5] while another concerned a secular trial in the Patrimony between the men of Ferentino and Silvamolle over certain lands.[6] Furthermore, of the same fifty-five letters thirty-seven (sixty-seven percent) also concerned clerical temporalities.[7] Thus, the pattern of the types of business in which the 'counsel' of the cardinalate was expressly involved simply mirrored that which was referred to the pope and curia broadly. In any event, the definition of the pope's 'brethren' could be potentially problematic: under Innocent II, for instance, the pope commonly referred to 'our brethren, the bishops and cardinals,' meaning, presumably, but not unequivocally, the cardinal-bishops and

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[1] W. Maleczek, *Papst und Kardinalskolleg*, 307-09; also, I.S. Robinson, *Institutions*, 427; I.S. Robinson, *Papacy*, 103; N. Zacour, *Cardinals' View*, 415 and n. 11.

[2] See, W. Maleczek, *Papst und Kardinalskolleg*, 309-17; also, I.S. Robinson, *Institutions*, 427.

[3] *PL*, Lucius II, no. 24, 25, 39, 40, 41, 43; *PL*, Eugene III, no. 2, 6, 25, 76, 82, 101, 152, 185, 186, 187, 201, 253, 322, 324, 395, 449, 458, 512; *APRI* 2, no. 396 (JL, 9396); *APRI* 3, no. 71 (JL, 8830), 80 (*IP* 6/1, 254/13; JL, 8960); *EPRI*, no. 207 (JL, 9632); PUE3, no. 62; PUF8, 41 (*PL*, Eugene III, no. 547; JL, 9661); PUS2, no. 47, 48, 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934), 67, 68; PUP, no. 51, 52; PUKHL, no. 51; Nachträge zu den PU in Italiens 2, no. 9 (*IP* 3, 179/15; JL, 8497); PU in Pisa, no. 4 (*IP* 5, 62/213); PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); PU in Padova, no. 3 (*IP* 7/1, 315/6).

[4] PUF6, no. 61.

[5] *APRI* 3, no. 70 (JL, 8826).

[6] PU in Campanien, no. 10 (*IP* 2, 147/4). For the rest, Eugene confirmed the primacy of the archbishop of York (PUE2, no. 43); another concerned the canonisation of the former Emperor Henry II (*PL*, Eugene III, no. 93 [*Bambergensia*, no. 35; JL, 8882]); two others the re-creation of the diocese of Tournai (*PL*, Eugene III, no. 96, 126); and another the dissolution of the diocese of Modena (*PL*, Eugene III, no. 316). In May 1152 Eugene wrote to Frederick I of Germany acknowledging the new king's election and informing him that, 'from the counsel which has been communicated by our brethren we have arranged to send soon to your sereneness from our side legates, through whom we have arranged to disclose to your glory our intentions and designs.' *PL*, Eugene III, no. 504. Otherwise, three letters concerned the papal grant of a quarter of all offerings made at the altar of St. Peter's in Rome to the canons of the same church, made 'from the common counsel of our brethren:' Nachträge zu den römischen Berichten, no. 8 (*IP* 1, 141/31); *IP* 1, *55/7 (*laudatum* in a privilege of 1192); see also, *PL*, Eugene III, no. 577.

[7] *PL*, Lucius II, no. 43; *PL*, Eugene III, no. 2, 6, 25, 93 (*Bambergensia*, no. 35; JL, 8882), 96, 101, 126, 185, 186, 187, 316, 324, 395, 458, 504, 512; *IP* 1, *55/7; *APRI* 3, no. 70 (JL, 8826), 80 (*IP* 6/1, 254/13; JL, 8960); *EPRI*, no. 207 (JL, 9632); PUF6, no. 61; PUF8, 41 (*PL*, Eugene III, no. 547; JL, 9661); PUS2, no. 47, 48, 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934), 68; PU in Pisa, no. 4 (*IP* 5, 62/213); PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); PU in Padova, no. 3 (*IP* 7/1, 315/6); PU in Campanien, no. 10 (*IP* 2, 147/4); Nachträge zu den römischen Berichten, no. 8 (*IP* 1, 141/31). Of the forty-seven letters stipulating these clauses concerning clerical or other *controversiae*—that is, including also those involving lay parties—thirty (sixty-four percent) also concerned clerical temporalities: *PL*, Lucius II, no. 43; *PL*, Eugene III, no. 2, 6, 25, 101, 185, 186, 187, 324, 395, 458, 512; *APRI* 3, no. 70 (JL, 8826), 80 (*IP* 6/1, 254/13; JL, 8960); *EPRI*, no. 207 (JL, 9632); PUF6, no. 61; PUF8, 41 (*PL*, Eugene III, no. 547; JL, 9661); PUS2, no. 47, 48, 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934), 68; PU in Pisa, no. 4 (*IP* 5, 62/213); PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); PU in Padova, no. 3 (*IP* 7/1, 315/6); PU in Campanien, no. 10 (*IP* 2, 147/4).

other two orders of cardinals.[1] While such references in the letters of 1143-53 were in fact relatively rare,[2] nevertheless, there is evidence from the same period that the right to give counsel in papal proceedings was not yet, at least early on, a strict monopoly of the cardinalate, nor even, in all instances, of the cardinalate and important visiting clerics. Rather, early on, even the pope's principal lay vassals could be included,[3] as in the case in 1141 of Abbot Hariulf, who noted, beyond the presence of certain Roman nobles, that of several important visiting prelates as well.[4]

Similarly, in May 1144, in a letter concerning the metropolitan controversy between Tours and Dôl, Lucius II wrote that he was confirming a previous sentence of Urban II with the 'counsel of our brethren,' naming, in order: two cardinal-bishops; the archbishop of Toledo; the bishops of Winchester and three Norman bishops; five cardinal-priests; four cardinal-deacons; five French abbots or priors, including the abbot of Cluny; and five Roman noblemen, including the Frangipani and Pierleoni, 'and many others, as much clerics as laymen, in assembly (*concessus*).'[5] It was not insignificant that, in the enumeration of the 'brethren,' the visiting provincial bishops were still given precedence over the cardinal-priests. In another letter from March 1146 Eugene III approved the petition of the church of Bamberg for the canonisation of Henry II with the counsel of 'the archbishops and bishops who were at the time present to assist'[6]—two other letters referred to acts of the Council of Cremona on 7 July 1148 in which the pope noted that he was acting with the counsel of the assembled bishops.[7] Otherwise, the evidence from the period is silent upon the practice of visiting prelates or other non-cardinals[8] conferring counsel, although

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[1] See, e.g., from the *Patrologia latina* alone, *PL*, Innocent II, no. 14, col. 62-64, no. 46, col.96, no. 84, col. 123-25, no. 137, col. 180-81, no. 192, col. 242-44, no. 207, col. 256, no. 212, col. 257, no. 267, col. 298-99, no. 394, col. 452-53, no. 398, col. 459-62, no. 399, col. 462, no. 435, col. 500-01, no. 458, col. 529-30, no. 502, col. 568.

[2] *PL*, Eugene III, no. 577; *IP* 2, 158/13; *APRI* 2, no. 383 (JL, 8659); *APRI* 3, no. 114 (JL, 9732); Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465); Wibald, no. 347 (*Constitutiones*, 188-89, no. 134; *IP* 1, 180/9).

[3] Cf., W. Maleczek, *Papst und Kardinalskolleg*, 307-08, esp. 308 n. 55-56; also, I.S. Robinson, *Papacy*, 113.

[4] *Der Bericht des Abtes Hariulf von Oudenburg*, 102-03.

[5] *PL*, Lucius II, no. 40. At the beginning of 1147 Eugene III would confirm Lucius' act explicitly noting that Lucius had confirmed Urban II's decision with the counsel of all present, including the laymen. *PL*, Eugene III, no. 152.

[6] *PL*, Eugene III, no. 93 (*Bambergensia*, no. 35; JL, 8882).

[7] A charter of ca. 1175 affirmed that Eugene deposed the bishop of Acqui 'with the counsel of the cardinals and the archbishop of Milan and the bishops of all of Lombardy who were then with him.' *IP* 6/2, *192/6. And in late August 1148 Eugene noted that he had deprived the diocese of Modena of episcopal status 'with the common counsel of our brethren, including both the cardinals as well as...the patriarch of Aquileia...and a great number of bishops who had convened.' *PL*, Eugene III, no. 316.

[8] Cf., W. Maleczek, *Papst und Kardinalskolleg*, 308 n. 55, who mistakenly added at least two other documents of Celestine II, Lucius II, and Eugene III to his list of instances in which 'counsel' was described as being given to the pope by 'other prelates' along with the cardinals: Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465), from the end of 1143, is discussed below and stipulated only 'the will and consent' of the entire Roman curia, but no other 'prelates' *per se*; and *APRI* 3, no. 114 (JL, 9732), from mid-June 1153, simply recorded the donation of the *castrum* of Radicofani to the pope by a certain abbot 'in the presence' of the cardinals and many other curials and witnesses—this was not an instance of counsel, which was not mentioned as having been given or taken by any party, nor was there any insinuation that anything was done 'in consistory;' cf., *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14). Maleczek also added *PL*,

provincial prelates were scarcely being excluded from the judicial business of the curia. By mid-century, provincial bishops and even, to a much lesser extent, abbots' active participation in papal causes occurred in the papal letters primarily as judges delegate. As a result, taken together, the administration of papal justice had rather clearly become a highly cooperative and integrative process, and had come to involve, both at the curia and in the provinces, most known members of the cardinalate, as well as even lesser curial officials, and a large segment of the episcopate.

On the other hand, the letters offered little insight into the question of the actual right of the cardinals to consultation, let alone of actual consent. For the period 1154-53 evidence from three papal documents from either end of the period suggests that the consent of the cardinals and others in the Roman Church was, if not necessary, at least preferable in matters pertaining to the curia's own temporal and political business. First, at the end of 1143 a document was drafted by a *scrinarius* of the curia, subscribed by nine cardinals, and witnessed by several Roman nobles in which 'Celestine II, pope by the grace of God of the Catholic and apostolic Roman Church, with the consent and will of the bishops and cardinals and all of the remaining curia, on this particular day, with our own will,' leased numerous papal holdings in the area of the Romagna to the *tutor* of the sons of the former count of Bertinoro on behalf of the minor heirs of the count.[1] Nearly ten years later on 23 March 1153 the Treaty of Constance would stipulate that the German king and future emperor Frederick I 'will effect a truce or peace neither with the Romans, nor with Roger of Sicily, without the free consent and will of the Roman Church and the lord pope, Eugene, or his successors who should be willing to the hold to the terms of the subscribed concord with King Frederick.'[2] In this last case the implication of the 'will of the Roman Church' was equivocal—the phrase 'Roman Church' was used commonly in this period, without qualifiers, though not as commonly as the phrase 'apostolic see'—and may or may not have been intended to imply the will of the cardinalate only. Nevertheless, three weeks later a letter addressed to the cardinal-priest Bernard of S. Clemente and canons of St. Peter's in Rome stipulating the grant of a quarter-part of all offerings made at the altar of St. Peter's to the canons of the same church stated clearly that it was being made 'from the consent of our brother bishops and cardinals.'[3] This matter, however, concerned exclusively the rights of the churches of Rome, and thus, the Roman *familia*, and was in this case unique.

These types of explicit consent, furthermore, were not borne out in the numerous other documents of the period pertaining to the papal Patrimony and other political affairs. More

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Eugene III, no. 458, a letter of 1151 to the archbishop of Canterbury, which was more ambiguous, but still did not seem to imply the counsel of others beyond the cardinals.

[1] Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465).

[2] Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45).

[3] *PL*, Eugene III, no. 577.

importantly, the 'will' or necessary 'consent' of the cardinals was not indicated in any other papal letters pertaining to all other business, including decisions over controversies.[1] In fact, on the question of the obligation of consultation and the cardinals' right of advice, and whether they correspondingly implied or required consent, 'Gratian's' *Decretum* was reticent, as it was on other legal questions associated with the rights, beyond the right to elect the pope, which the cardinalate had acquired in practice in the first half of the twelfth century. As a result, to subsequent canonists, these also remained open questions.[2] In fact, the theory that the pope should be bound by the cardinals advice only first appeared in a papal document in a privilege of Adrian IV from February 1156 confirming the Spanish primacy of the see of Toledo, made 'with the counsel which has been communicated by our brethren,' and cancelling a privilege which the archbishop of Compostella had obtained from Anastasius IV freeing his church from Toledo's jurisdiction 'chiefly because [Anastasius' privilege] would have been elicited neither from common counsel nor from the counsel of the saner part of the brethren.'[3] Under Innocent III, however, while all important causes probably did come before the cardinals as an advisory board, it has been said, it was left to the pope's discretion to determine which of those causes were in fact 'important.' The question was never thoroughly defined, in any event, and throughout the thirteenth-century popes, cardinals, and canonists would continue to wrestle without decisiveness with the constitutional definition of the cardinals' place in participating in papal acts, and whether the inclusion of *fratrum nostrorum consilio* implied both the right of consultation as well as the obligation of consent to such counsel. In any event, it seems safe to conclude that, by 1150, in practice, while consultation remained not technically obligatory on a pope, he invariably did consult his cardinals

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[1] In January 1150 the cardinal-deacon Guido(4) de Crema wrote to King Conrad III that, 'the lord pope and Roman Church have affirmed the sentence which we promulgated against the adversaries of the duke [of Poland] and your sister [the duchess].' Wibald, no. 225. I.S. Robinson emphasised that the excommunication appears to have been described thus as 'a joint pronouncement' of lord pope and the Roman Church. I.S. Robinson, *Papacy*, 46, 115; see, *PL*, Eugene III, no. 271, 319, 376; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 7, col. 1619-21. Otherwise, the narrative sources shed little to no light on the question of cardinals' consent, beyond John of Salisbury's observation that it was Eugene's custom always to defer to the advice of his cardinals: *HP*, 43; cf., *HP*, 43-45, 73-75, 80-82 (*IP* 8, *46/175; *IP* 9, *172/1); Wibald, no. 46, 47; see also, *PL*, Eugene III, no. 246, 254; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 1, col. 1613-15; I.S. Robinson, *Papacy*, 113-15, 356-60; I.S. Robinson, *Institutions*, 429. See also, *LP*, 388: Cardinal Boso, in his biography of Pope Adrian IV, recorded that although Nicholas Breakspeare, having come to Rome as abbot of St. Ruf on various business, wished to return home, Eugene III 'retained him with him and consecrated him as bishop of Albano [1149-54] from the common counsel of his brethren.'

[2] Cf., Rufinus, *Sermo habitus in Lateranensi concilio sub Alexandro papa III, Le discours d'ouverture du concile général du Latran (1179) et l'oeuvre littéraire de maître Rufin, évêque d'Assise*, ed. G. Morin (Atti della Pontificia Accademia romana di archeologia 3: Memorie 2: Rome, 1928), 116-20, here at, 116; Huguccio, *Summa* ad D. 4 c. 3, cited by B. Tierney, *Foundations*, 81, who provided the Latin; *Glossa palatina* ad C. 25 q. 1 c. 6, cited by B. Tierney, *Foundations*, 81, who provided the Latin; see also, W. Maleczek, *Papst und Kardinalskolleg*, 303-04; I.S. Robinson, *Institutions*, 429; N. Zacour, *Cardinals' View*, 421-22.

[3] *PL*, Adrian IV, no. 83, col. 1447-48 (JL, 10,141); see, I.S. Robinson, *Papacy*, 115; I.S. Robinson, *Institutions*, 428.

on most if not all matters of business.[1]

4.3 THE CARDINALATE AND DELEGATION

It has been thought that, beyond their own participation in the pope's justice as advisors, cardinals in the later years of Innocent II's pontificate increasingly were being delegated cases outright for hearing—in the capacity of 'auditors' as it has sometimes been described[2]—and or decision,[3] a practice thought to have begun sporadically under Paschal II who commissioned at least three different cardinals, including his chancellor John of Gaeta (future Pope Gelasius II), 'to hear and define a cause.'[4] In the decade following Innocent II's death, this had certainly become an established if not rigidly defined practice, as numerous letters of 1143-53 explicitly demonstrated the practice of delegating causes outright to cardinals at the curia.[5] Thus, for instance, on the day of Celestine II's death a letter was sent out to the abbot and monks of the monastery of S. Pietro, Cremona, describing their controversy with the bishop of Cremona 'over the church of S. Margarita situated in the town of Citanova, which has been, with justice dictating, terminated by our brothers, namely, [Goizo, cardinal-priest of S. Cecilia, Gregory, cardinal-deacon of SS. Sergio e Bacco, and Guido(3) Moricot, cardinal-deacon of SS. Cosma e Damiano and chancellor under Eugene III from 1146], from our mandate with this form.'

As in many other such delegated causes, the actual terms of the settlement were quite sophisticated, centring upon the rather subtle legal question of the jurisdictions governing a particular type of monastic church. The monastery itself claimed the church of S. Margarita in Citanova because it was situated on a monastic estate; while the bishop countered that the monastery had long leased out the very estate 'under a fixed pension.' The bishop further charged that he ought to hold a quarter part of the tithes and offerings of another church of the monastery, S. Paolo, in the same township. As an apparent compromise, the cardinals judged that the monastery should be granted an extra fixed annual sum by the priest of the one church, beyond the established pension, while in the other church, the bishop, because he was not currently possessing a quarter share of the tithes and offerings in other 'chapels' of the monastery, was awarded only that which those other chapels customarily paid to the bishop according to their means, but without any serious exaction, on the occasion of the bishop being summoned to the 'synod of the

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[1] See, N. Zacour, *Cardinals' View*, 428-31; W. Maleczek, *Papst und Kardinalskolleg*, 319.
[2] On this, see, in particular, W. Maleczek, *Papst und Kardinalskolleg*, 325-35, esp. 325-28.
[3] See, e.g., *Der Bericht des Abtes Hariulf von Oudenburg*, 101; *IP* 1, 106/8.
[4] *IP* 1, *72/2, 72/3; see, I.S. Robinson, *Papacy*, 94-97, 105-06, 113, 139, 145, 181, 189-93; W. Maleczek, *Papst und Kardinalskolleg*, 325-28; J. Sayers, *Judges Delegate*, 9, 14-15; G. Phillips, *Kirchenrecht* 6 (Regensberg, 1845-), 756; K.W. Nörr, *Jurisprudence*, 331; M.G. Cheney, *Avranches*, 178-80.
[5] Bernard of Clairvaux observed for Eugene III that the cardinals were those 'who assist you daily, the elders of the populace, the judges of the earth.' *De consideratione*, Bk. 4. I. 1 (110).

Roman Church.' It was judged also that 'the bishop should compel the parishioners of the same church in his office as bishop not to inflict any injury or violence upon the persons placed in that place through the abbot of S. Pietro, nor, moreover, should the bishop nor neighbouring bishops interdict or prohibit the abbot from ordaining in the aforesaid church of S. Paulo his own monks or clerics.' Further stipulation was made over the bishop's claim to a piece of land in which one of the same cardinal judges, Goizo, had formerly as legate given the abbot permission to erect a new house: if the bishop would be able to prove his claim that the land pertained to his episcopal rights, he was to receive from the monastery an equal exchange of land.[1] The fact that the pope did in fact die on the very day to which the letter was dated suggests perhaps that the cardinalate and chancery were capable of operating definitively independent of direct papal authority.

At the other end of this period, in early 1153, at most three months before the death of Eugene III and with the curia at last residing in Rome, the cardinal-bishops Imar of Tusculum and Hugh of Ostia issued an encyclical concerning a longstanding quarrel between the prior of the church of St. Pierre, Abbeville and the abbot of the church of Notre Dame, Cercamp over a certain part of the territory of the church of Notre Dame, which the prior had claimed to pertain to the rights of Abbeville. 'At length,' the cardinals wrote, and 'with the assent and will of the lord pope,' the parties 'have convened for this:' the prior of Abbeville, with the common consent of the abbot and chapter of Cluny as well as his own, 'has renounced, released, and conceded into our hands at Rome to be possessed quietly in perpetuity for the church of Notre Dame in Cercamp all which [the prior] was complaining about in the entire territory of Cercamp,' including the land-rents (*terragia*), tithes, woods, justice (*iustitiae*), and cultivated or uncultivated lands. In return the church of Notre Dame would pay Abbeville an annual *census* along with an additional ten pounds given up front by the abbot himself.[2] In fact, Cercamp had already received a papal privilege of protection at the end of September 1147.[3] Thus, the curious statement that all of the contested properties had been conceded 'into [the cardinals'] hands at Rome' suggested in this case a possible connection between papal judicial processes and the processes by which ecclesiastical houses and prelates utilised the papacy as a depository—or nominal 'owner'—of their own houses' proprietorship, titles, and goods.

In any event, despite the cardinal' own authentication of the arrangement, the abbot of Cercamp in this case apparently thought it appropriate to have it personally confirmed by Eugene III himself,[4] who wrote to the same abbot on 21 March: 'Those things which are terminated in our

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[1] *APRI* 3, no. 55 (JL, 8516); also, *PL*, Eugene III, no. 308; *IP* 6/1, *276/7, *276/8, *288/9.
[2] PUF3, no. 32.
[3] PUF3, no. 28.
[4] Gerhoh of Reichersberg would later write ca. 1156: *Sic etiam papam Eugenium vidimus aliquanto fecisse, cum haberet secum peritos legis humanae, quibus in absentia sua negotia ventilantibus ipse tandem ea consummavit iudiciis finalibus*. Gerhoh of Reichersberg, *Ex libro de novitatibus huius temporis*, *MGH SS*

presence through a concord or judgement ought to persist in their own firmness and, lest in future they be moved from the rectitude of their status, be fortified with the authority of the apostolic see.' Therefore, he noted, just as the same controversy 'would have been, with our assent, concordantly terminated with...the bishops Imar of Tusculum and Hugh of Ostia mediating, we have led the composition itself to be committed to the present writing, lest it is moved from its own status with the process of time, and to be fortified with apostolic writings.' Nothing original was added to the cardinals' separate description of the case, except the notation that the ten pounds to be paid up front by the abbot to the prior was to be done so 'on account of the damages which [the prior] was claiming that he has endured through you and your own.' And finally, unlike the cardinals', the pope closed his confirmation with a papal anathema clause, which as a rule stipulated the threat of divine punishment, in this case, 'so that that composition might remain unshakable for all time.'[1] Nevertheless, it was apparently a busy few days at Rome for the prior of Abbeville and the cardinal-bishops Imar and Hugh. First, on 14 March 1153 a privilege of protection was issued for the Cistercian house of Valloires.[2] Then, a week later, again on 21 March, the pope wrote to the abbot of Valloires with an *arenga* and terms nearly identical to those in the above letter to the abbot of Cercamp: the abbot of Valloires' controversy with the prior of the church of St. Pierre, Abbeville had been 'concordantly terminated with our assent' by the bishops Imar and Hugh. In the settlement, the abbot of Valloires agreed to renounce in favour of the prior of Abbeville his claim to a certain church which the prior was likewise claiming; and in return the prior renounced all other claims in the monastery of Valloires and its possessions, as well as promising to return eighty sheep which the monastery had apparently been missing. Again, an anathema clause closed the document, 'so that that composition might remain unshaken for all time and be disturbed by no renewed litigation.'[3]

This practice of delegating cases outright to members of the cardinalate remained the same regardless of the curia's own displacement and consequent vagabondage. For instance, In March 1146, from Trastevere—where the curia had temporarily holed up in the face of the senate's renewed hostility, having months earlier worn down the commune enough by siege to enable it to re-enter the City, and a month before fleeing Rome altogether a second time, and for a far longer duration—the cardinal-priests Guido(2) of S. Crisogono, Hubald of S. Prassede, and Aribert of S. Anastasia, along with the cardinal-deacon John of S. Maria nuova, arranged a composition for the church of Piacenza under the authority of the pope. The settlement resolved a longstanding quarrel between the new archdeacon of Piacenza and the provost and canons of the

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Libelli de lite 3, 302; see also, W. Maleczek, *Papst und Kardinalskolleg*, 327. Presumably, Gerhoh was referring here to final papal confirmations of causes subscribed by the pope himself.

[1] PUF3, no. 33.

[2] PUF4, no. 62.

[3] PUF4, no. 63 (JL, 9378).

cathedral over the office and benefice of the archdiaconate: the controversy arose because the archdiaconate had been so long vacant that the exact nature of the customary rights of the archdeacon had become obscured, and accordingly persisted long enough that it was necessarily deferred to the 'justice' of the pope. Initial proceedings, it was noted, had taken place 'in the audience of the lord pope and his brothers.' However, 'the lord pope, desiring to provide in future for the peace and tranquillity of the same church, committed to us,' the cardinal judges wrote, 'the same controversy to be heard and terminated through a concord.' As in most other cases, no express cause for the delegation was given. Nevertheless, from Trastevere, the delegated tribunal, 'having received the mandate of the lord pope,' accordingly heard the controversy and, they noted, because of the complicated nature of the case, enacted, with the 'concordant assent' of both parties, lengthy and minute terms settling the arrangement of the rights and properties of the chapter, including the provision of the archdeacon's own horses and the employment of his own knights for the defence of the church.[1]

Two months later the pope himself wrote from Sutri in the Patrimony, whither the curia fled, to the abbot of the monastery of Lérins and his brethren informing them that their case with the church of Vintimiglia 'has been terminated from our mandate through our brethren, namely, [Cardinal-priest Guido de Summa of S. Lorenzo in Damaso and the cardinal-deacons Guido(3) Moricot of SS. Cosma e Damiano and John of S. Maria nuova].'[2] Again, the points of the case were fairly complex, with conflicting but plausible claims put forth on both sides which would have presented certain legal niceties for deliberation and adjudication. Lérins had complained against the canons of the church of Vintimiglia over a certain church: against the protests of the abbot and brethren of the monastery, the canons were accused of illicitly appropriating their own funeral and burial rights, to the complete exclusion of the monastery, in a certain church of St. Michel beyond the walls of the city; of also building another church in injury to the monastery in the cemetery of the same church; of exacting tithes from the labour of the monks; and of making a procession to the same church and celebrating the divinities there on the festival of St. Michel, upon which they would insist upon a feast which when not offered was sometimes extorted through force. In defence, the bishop and canons asserted on many grounds that all of the alleged violations were in fact their legal and customary right. The cemetery in question, they asserted, was common property, pertaining therefore to the major church: the fact that it did not lie within the city proper was merely a historical accident due to the circumstances—*anguistiae*—of the place and time. Furthermore, the cathedral church had always maintained this custom in the

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[1] Nachträge zu den PU in Italiens 5, no. 9 (*IP* 5, 464/20); see, for a similar case delegated to cardinals, PUS2, no. 52.

[2] The *arenga* stated: 'Since through us we are not able to administer all of the various ecclesiastical business, we commit some, according to the time and place, to be terminated to our brethren concerning whose discretion we trust.'

church of St. Michel and its cemetery; it had also always, up to the point of the current lawsuit, received the tithe without any opposition; and both the bishop and his *maiores* had personally and repeatedly been honorifically received with regard to the offices and the benefice. Accordingly, the aforesaid cardinals, 'having then and there diligently inquired into the claims and counter-claims,' enacted an elaborate settlement 'with the common assent of both parties from our [papal] mandate' and 'for the sake of a concord.'[1] However, while the apparent complexity of the case and its settlement would suggest the influence of legal expertise, none of the cardinals directly involved in this case are actually known to have been *magistri*. Like most cardinals active in this period, however, they were seemingly expected to be able to function competently as auditors and judges in the offices of papal justice, in which each of these cardinals would become veterans in the course of the period 1143-53: Guido de Summa would be explicitly implicated in at least twenty-one separate papal letters of the period concerning clerical *controversiae*; Guido(3) Moricot, who would soon become papal chancellor, in at least twelve letters; and the cardinal-deacon John in at least six letters.[2]

Similarly, in June 1150—two weeks before the curia again fled Rome, after a rare six-month period of residency, for various strongholds in the Patrimony—the pope wrote to the abbot of Marseilles concerning his controversy over a certain church with the bishop and canons of the church of Avignon. Both parties convened before the pope, the letter informed, 'and since the same cause had been kept up a long time by both parties, it has pleased well both parties to commit the same cause, with our consent, into the arbitration of our brothers [Cardinal-bishop Nicholas of Albano, the cardinal-priest and chamberlain Jordan of S. Susanna, and the cardinal-deacons Gregory(2) of S. Angelo, Guido(4) de Crema of S. Maria in Porticu, and Jacinth of S. Maria in Cosmedin], who, to be sure, are terminating the same controversy with this form, which at the same time they are redacting in writing.' Significantly, the letter pointed out explicitly that the cause was given *in arbitrio* to cardinals by request of the parties, and with papal consent, and that the cardinals themselves were responsible for the documentary redaction of the elaborate and complex terms of settlement, involving the *altaria*, or all of the offerings of the church, the performance of the divine offices and other sacraments, burial rights, the rules governing the reception of excommunicates and episcopal interdicts, the episcopal synod, and criminal jurisdiction and correction—a general clause was also included forbidding the usurpation of all parochial rights beyond those specifically 'annotated in the present writing.' Interestingly, in demonstrating the logistical lengths to which clerical jurisdictional jealousy and competition could lead, the letter then stipulated that 'it has been ordered that the chapel which the bishop has recently constructed hard by the aforesaid church be moved by our same brothers the distance of

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[1] Appendix 1, no. 91 (*APRI* 1, no. 204 [JL, 8919]—5/13/46); also, *IP* 6/2, *365/1.
[2] See, Appendix 2.

100 strides, so that within that span itself the bishop or canons may not build a new church.' In total, the terms of settlement demonstrated the extensiveness, and even pettiness, of the actions of any given suit—in this case, simply, over a single local church—brought before the curia. And, again, in this case the very many legal niceties involved were handled without any apparent objection by a curial tribunal of mixed clerical orders, although none of the cardinals involved are known to have been actual lawyers.[1]

The same practice continued even outside of Italy. In February 1148 the pope wrote from Verdun to the canons of St. Paul, Verdun that 'because it is the duty of our office to put scandals out of the way and reduce discords to a concord, it has pleased us to commit the cause' between the canons and the cantor of Verdun over the construction of a certain mill to the cardinal-priest Gilbert of S. Marco and the cardinal-deacon John(3) Paparo 'to be terminated through a concord.'[2] Numerous controversies, furthermore, were addressed by papal letters in the month following the proceedings of the Council of Reims in late March 1148;[3] while at least two of these controversies were explicitly settled by cardinal judges. On 5 April 1148 Cardinal-priest Julius of S. Marcello and Cardinal-deacon John(3) Paparo of S. Adriano issued an encyclical concerning a controversy over certain churches and their appurtenances between the abbots of St. Pierre, Jumièges and St. Vincent, Le Mans. The cause, it was stated, was 'committed' to the cardinals by Eugene and duly terminated. The abbot of Jumièges claimed restitution, claiming that his own monks had been driven out of the churches in question by the monks of St. Vincent two years before the Council of Clermont in 1095. And to 'confirm' his claims to possession, the abbot adduced a certain instrument which did in fact confirm that Charlemagne himself had selected the *villae* in which the contested churches dwelt from the other *villae* of Jumièges and conceded them to the use of the monks of Jumièges. The cardinal-judges, however, observed that no mention was made in the document of the actual churches in question. Furthermore, they noted, the same instrument, 'although it appeared old,' bore no seal. The cardinals in question, therefore, were clearly regarded as more than competent to pass sentence in the context of the procedural technology associated with the inspection and analysis of ancient and, in this case, imperial documentation which, in this case, given the lack of specific mention of the churches as well as its own antiquity, seems only to have complicated the issue. Accordingly, the abbot of Jumièges produced three witnesses to attest both to his house's long possession of the churches and his monks' violent ejection at the hands of the monks of St. Vincent. Curiously, and suspiciously, however, the abbot

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[1] Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 369-70, no. 941 (JL, 9393).
[2] PUF1, no. 55.
[3] In addition to the examples discussed below, see, e.g., *PL*, Eugene III, no. 264, 266, 270, 274, 275, 280, 281, 284, 285, 288, 289, 292; JL, 9201, 9217; PUF2, no. 57, 58; PUF6, no. 62; PUF7, no. 66; PUF7, Nach. Gott., no. 35; PUS2, no. 60 (JL,9258); PUP, no. 46; Archives de l'Orient latin 2, 255, no. 4 (JL, 9241); cf., N. Häring, *Notes*, 44.

further moved through his own advocate a question concerning the proprietorship while suggesting the possibility of a sale. To prove this *dominium*, he re-adduced the same instrument of Charlemagne as well as the three witnesses, whom the cardinals refused to receive on the basis of the inconsistent testimony and their general unacceptability. As with chancery technology, therefore, the cardinal-judges—though neither, again, are known to have possessed any formal legal training—felt confident to determine witness veracity and procedure.

On his side, the abbot of St. Vincent denied all of his adversary's allegations, publicly producing a charter of confirmation of the same churches produced by the bishop of Le Mans and bearing his seal. He further produced four witnesses of his own, two of whom—apparently quite ancient in their own right—attested on the Gospels that they had personally known the monks of St. Vincent to have quietly possessed the aforesaid churches for seven years prior to the period during which the abbot of Jumièges claimed that his house had possessed and the monks of Jumièges had been violently driven out. And apparently, in the eyes of the cardinal-judges, their testimony stood up; for, on the basis of these allegations, the document stated, the cardinals, 'having been invested (*moti*) with the authority of the lord pope, Eugene, and the holy Roman Church,' absolved the abbot of St. Vincent from the claim of Jumièges with regard to the possession as well as the proprietorship, awarding the abbot further 'quiet and peaceful' possession.[1] The proceedings, it was noted in the dating clause, took place in the 'chapter-hall of Reims,' where the pope still resided on 5 April.[2] In fact, beyond the trial of Gilbert de la Porrée which was either being conducted or concluded around this time,[3] at least three other letters[4] and one privilege of protection[5] were also dated to this day. As a result it may have very well been a busy day of business for the curia, thereby necessitating delegation. Likewise, a week later the pope, still at Reims, delegated a 'longstanding controversy' between the monastery of St. Sauveur, Aniane and the canons of St. Sépulcre over a certain church again to the cardinal-priest Julius and cardinal-deacon Jacinth 'to be heard and terminated.' In this case the delegates agreed to accept the testimony of three witnesses—'that the abbot of Aniane had been violently expelled from the possession of the aforesaid church'—based only upon a written brief submitted by the archbishop of Arles, 'who had discussed the same cause from our mandate.' On the basis of this report, the cardinals judged in favour of S. Sauveur.[6]

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[1] PUF5, no. 76.
[2] See, JL 2, 54.
[3] On this, see, ch. 1.3 and 2.1.
[4] *PL*, Eugene III, no. 279, 280, 282.
[5] JL, 9223.
[6] *EPRI*, no. 202 (JL, 9237). The pope was also apparently delegating the office of merely confirming judicial decisions. Thus, in February 1153, 'with the consent and authority of Eugene III,' the cardinal-priests Roland of S. Marco and John(4) of SS. Giovanni e Paolo and the cardinal-deacon John(2) of SS. Sergio e Bacco, with the further advice of Cardinal-priest Cencius of S. Lorenzo in Lucina, confirmed a transaction between two provosts from Pavia engineered apparently by a judge of Pavia over a certain possession. The act, it was

Numerous similar cases involved the activities of cardinal legates, or legates *a latere*,[1] although it has been said that it was only under Alexander III that a new impetus was given to the legatine system making it possible for legates to exercise direct judicial powers in the provinces.[2] But as the letters of the cardinalate of the period 1143-53 clearly demonstrated, legates already were handling causes both through commission of the pope as well as on their own cognisance in the provinces. One particularly involved case concerned the monks and canons of S. Ambrogio, Milan, spanning the lengths of the pontificates of both Celestine II and Lucius II, in which it was fully noted that legates had been dispatched to Milan expressly for handling the cause.[3] Also in 1144 the cardinal legates Bishop Alberic of Ostia and Imar of Tusculum wrote to the abbots, priors, clergy, and populace of the church and diocese of Bayeux: 'To oppose apostolic orders is clearly proven, through manifest accounts from the canons, to be equivalent to sacrilege. We wish to be made known to your fraternity that the lord pope has enjoined upon...the bishop of Bayeux...*viva voce* and in writing to strive to recover the goods of the church of Bayeux which have been illicitly distracted and alienated through the lack of care and negligence of pastors and to extirpate the wicked customs which have been introduced through error.' In this case, the legates appear to have acted with an understanding of the papal will or intention, if not with specific orders. Accordingly, they ordered them all, 'in accordance with the terms of the mandate and letters of the lord pope, to release peacefully and quietly to [the bishop of Bayeux] the ecclesiastical properties and various episcopal rights which you have occupied with regard to the churches and ecclesiastical persons and are detaining against God and the well-being of your souls, and not presume anything against the terms of the aforesaid writings or immunity which have been conceded with regard to the same, but restore to him in their entirety the goods and possessions.' Otherwise, they closed, 'it will be necessary that we hold ratified the sentence of excommunication which your same bishop should canonically promulgate against you.'[4]

In other instances, more importantly, judicial causes presumably came directly on appeal or in the first instance to cardinal legates, having been already delegated to distant provinces. In autumn 1144, for instance, Cardinal-bishop Alberic, 'legate of the apostolic see,' writing to the

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noted, took place 'at Rome at St. Peter's in the palace of the lord pope, in the presence of the cardinal[-priest Gerard of S. Stefano in Celio monte] and other men.' *IP* 6/1, 188/1; see, similarly, *IP* 6/2, *382/2 (*laudatum* in a privilege of Gregory VIII, *IP* 6/2, 383/10 [1187], which confirms the 'concord').

[1] For an overview of papal legates in the twelfth century, see, I.S. Robinson, *Papacy*, 33-120, 146-78.

[2] J. Sayers, *Judges Delegate*, 25-34, citing, M. Pacaut, 'Les légats d'Alexandre III (1159-81),' *Revue d'histoire ecclésiastique* 50 (1955), 821-38.

[3] See, *IP* 6/1, *76/10 (JL, 8471), 77/11, 77/12 (JL, 8438), 77/13-14, 78/15-18, 79/21, *79/22-23, 79/24, 80/25, *80/26, *288/9; *APRI* 2, no. 379 (JL, 8571), 380 (JL, 8632), 382 (JL, 8654), 383 (JL, 8659), 384 (JL, 8660). See, similarly, e.g., in the metropolitan case between St. David's (Menevia) and Canterbury, *PL*, Lucius II, no. 39.

[4] PUF2, no. 24. See also, for further controversies delegated by the pope to cardinal legates, *IP* 2, *158/11; *IP* 6/1, 188/1.

archbishop of Rouen and his suffragan bishops, made this explicit: 'Coming to Chartres, we have lately accepted a grave complaint lodged by...the abbot of St. Pierre...and the brethren of his monastery, namely, that in their churches, against the terms of their privileges and the ancient dignity and custom of their monastery and long possession, you are stealing their portion of their oblations and small tithes.'[1] In February 1144-45 the same 'legate of the holy apostolic see' wrote to the abbot of Ahun that the abbot of St. Denis had complained to him that he had employed a lay agent to despoil 'violently' a monastic dependency of St. Denis on account of a controversy over a certain church which belonged by rights to the dependency. The abbot of Ahun had already been suspended from his office as a result by the bishop Geoffrey II of Chartres (1116-49), himself 'legate at the time,' yet he contemned both the monks' restitution and the bishop's sentence. Accordingly, the cardinal ordered the abbot to invest the monks with the same church without delay; at which point, should the abbot maintain his own cause in the matter—should he maintain that he might be able to demonstrate anything against the monks in the cause—he was afforded the opportunity to present himself before the cardinal legate by a certain date at Vézélay or, should the legate's own travel plans change, wherever he should be at the time, prepared to respond to the charges and make satisfaction on account of his contempt. Should the abbot not present himself at such time, he was informed that from that day forward he would be barred from entering any church.[2]

Sometime in 1145 Cardinal-bishop Imar of Tusculum, 'legate of the apostolic see,' issued an encyclical as a publication of a judgement over a controversy between the bishop of Rochester and the monks of the church of St. Andrew, Rochester over the rights to certain manors. The monks claimed that the manors had been 'rationally' conceded and donated to them for their own support by King William II of England, Archbishop Lanfranc of Canterbury, and a former bishop of Rochester. In support, and for 'a more manifest proof' of the act by the same original donors as well as subsequent confirmations by Kings Henry I and Stephen, and Archbishop Anselm of Canterbury, the monks publicly adduced charters and documents of confirmation. Again, the papal legate was fully equipped to treat all sophisticated and 'rational' forms of judicial procedure, without recourse to any papal archive. In defence, the bishop of Rochester responded with nothing 'firm' or 'valid,' that is, without any documentary 'proof' of his possession of rights in the contested manors. Consequently, the cardinal, with the archbishop of Canterbury, the bishops of London, Winchester, Lincoln, Norwich, Chichester, and the abbots of St. Albans, Westminster, and Sherborne, along with a certain *magister* and an indeterminate number of additional 'religious persons' in attendance, judged in favour of the monks, awarding them, 'in accordance with that which was contained in the charters of donations and confirmation.'

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[1] PUF6, no. 54.
[2] PUF9, no. 42.

Significantly here, and perhaps because the case involved a fellow-bishop as a party and turned upon multiple, and presumably, valuable manors, a full throng of regional ecclesiastical luminaries was recorded as having sat in on the proceedings.[1] Similarly, in March 1152 the cardinal-bishop of Albano Nicholas Breakspeare recorded a sentence he passed between the bishop and canons of Luni over a certain chapel while passing through and celebrating Easter there in 'hastening from the mandate of the lord pope Eugene to the legation of Norway entrusted to us.' The terms of the judgement were detailed by the legate who noted significantly that sentence had proceeded only with the 'assent' and 'favour' of the parties themselves; with a last significant technical detail included: 'Moreover, so that this present page has support and soundness in future, we have fortified it itself with the impression of our seal.'[2]

In a far more involved case, sometime probably between mid-1144 and mid-1145,[3] the same Cluniac cardinal-bishop of Ostia, Alberic, wrote as legate to a certain monk named Bertrand who had been attempting to usurp the abbacy of Moissac, with certain backers amongst the monks, and had in consequence been excommunicated by the legitimate abbot-elect. The legate therefore commanded Bernard, 'from the authority of the apostolic see committed to us,' to make amends and peace with the new abbot-elect or otherwise suffer his 'very fitting and deserved sentence of anathema.'[4] The cardinal legate also wrote to the bishop of Agen informing him of the same letter and charging him to execute his own instructions regarding the correction and punishment of the monk Bertrand, whom, it was stipulated, 'should he prefer to endure pertinaciously in his error, let you hold as an excommunicate and further proffer a very deserving sentence of anathema against his abettors.'[5] In this case, however, the efforts of the cardinal-bishop as well as the presumed efforts of the bishop of Agen had apparently little effect, so that the legate was compelled to write directly to the monks, clergy, and populace of Eysse that the same Bertrand had been unwilling to desist in his designs. Accordingly, he announced, 'with the apostolic authority entrusted to us, we absolve you from his obedience and subjection and prohibit by all means that you conspire with him.' Suitable threats of punishment followed.[6] Again, however, the renewed efforts of the legate

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[1] The papal *attestatio* accordingly closed, vaguely providing the monks with what amounted to the force and effect of a papal privilege of protection: 'Therefore, we, bestowing an easy assent upon the just petitions of the aforesaid brethren, confirm for them and fortify with the attestation of the present writings not only the oft-mentioned manors but also all of their other goods and possessions which they justly possess at present or in the future they are going to possess legitimately, as well as the collected rights, customs, and liberties which have been rationally granted with the authority of the office with which we are engaged.' PUE2, no. 45.

[2] PU in Ligurien, no. 1 (*IP* 6/2, 382/1). See also, for other controversies brought, apparently, independently to cardinal legates: Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4); *IP* 5, *153/2, 315/3, *476/20; *IP* 6/1, *60/168, 60/169, *393/7; *IP* 6/2, *63/7.

[3] While the editor, W. Wiederhold, gave the date 1138-46 for these letters, they almost certainly were written during Cardinal Alberic's French legation ca. 1144-45.

[4] PUF7, Nach. Gott., no. 28.

[5] PUF7, Nach. Gott., no. 29.

[6] PUF7, Nach. Gott., no. 30.

went apparently in vain, as the case ultimately found its way to Rome, with the pope in March 1146 confirming the excommunication of Bernard and his accomplices and ordering a entirely new election.[1] This apparent failure of legatine authority was in and of itself, however, no indictment of the authority wielded in the provinces by papal legates, but merely representative of the potential resistance all ecclesiastical, including papal, authority could and did confront—a freedom afforded to evasive parties by the papal appellate system itself. At the same time, the cardinal legate did demonstrate that he had a clear conception of his ability to impose independently whatever papal sanctions upon whatever parties he saw fit.

At the same time, cardinals were being sought out as arbiters in the provinces as legates, as they were at the curia itself. In April 1146 Eugene III wrote to the bishop and canons of the church of Hereford confirming a sentence over their controversy with the church of Chester over parochial boundaries, 'just as it has been canonically given and affirmed with the page of his rescript by our venerable brother, Imar, bishop of Tusculum, then legate of the apostolic see, in whom it was agreed by the bishop and clergy of both churches to abide by the decision of an arbiter.'[2] In other instances, the cardinal-bishop Conrad of Sabina (future Pope Anastasius IV) was referred to as papal 'vicar' at Rome during Eugene's exiles from the City in at least five different letters between May 1147 and July 1151:[3] in that stated capacity, this legate of sorts presided over at least four different controversies.[4] Otherwise, in demonstrating the complex and pervasive nature of papal justice in this period, the cardinals and other members of the papal curia were themselves involved in papal justice not merely as judges and advisors; rather, on albeit very limited occasions, they appealed to it as actual *auctores* or parties in controversies. For instance, in February 1150 Eugene wrote to the abbot and brethren of the monastery of S. Maria, Cryptaferrata-Grottaferrata, describing his decision over a suit pleaded between the monastery and the cardinal-bishop Imar of Tusculum concerning the parochial rights of the monastery itself and certain churches, confirming Calixtus II's decree that the monastery remain solely under the tutelage and jurisdiction of the holy Roman Church.[5] In this case it appears that a legal distinction was being drawn between those houses existing 'of the rights (*ius*) of St. Peter' and those which owed rights to a cardinal-bishop. Later, from Segni, demonstrating the temporal competition and jealousy even amongst the titular churches, as well as their own sophisticated temporal

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[1] *EPRI*, no. 193 (JL, 8877).
[2] PUE2, no. 52.
[3] See, *IP* 1, 80/6 (5/24/47); *IP* 4, 71/28 (11/27/47); *IP* 1, 51/6 (8/30/48); Nachträge zu den römischen Berichten, no. 8 (*IP* 1, 141/31) (7/13/51); PU in Campanien, no. 10 (*IP* 2, 147/4) (7/23/51); see also, *IP* 2, *147/2 (Anno 1145-51).
[4] *IP* 1, 80/6. *IP* 4, 71/28.*IP* 1, 51/6.PU in Campanien, no. 10 (*IP* 2, 147/4); *IP* 2, *147/2. See also, for this cardinal, *PL*, Lucius II, no. 40; *IP* 3, 4/14; *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14); Nachträge zu den römischen Berichten, no. 8 (*IP* 1, 141/31).
[5] *IP* 2, 44/12.

arrangement—as well as evidence that the curia was exercising some immediate authority over the lower Roman clergy by late 1151—Eugene settled a case between the titular churches of S. Prassede and S. Croce over certain lands 'in the presence' of four cardinal-priests and four cardinal-deacons.[1]

In sum, cardinals—beyond their capacity as mere advisors—were manifestly and competently presiding over a wide range of judicial causes as auditors, judges, and arbiters both at the curia and in the provinces. But as with procedures of justice generally in this period, the specific processes by which these causes were either delegated by the pope or admitted independently by cardinal legates were not conventionally formalised and appear to have proceeded largely *ad hoc*: cases were conducted as it seemed most expedient both to the pope and to the interested parties, who themselves often clearly saw the benefit of the cardinals' own justice. Nevertheless, It appears from the papal evidence that the cardinals' jurisdiction or authority, whether as judge delegate at the curia or as a judge as legate in the provinces, was largely unquestioned: the cardinals were, in fact, partners in the pope's tribunal, although it was often left to the pope himself to confirm, through his chancery and subscription, their decisions in writing. This participation was already so well established, in fact, that there is evidence that even lesser papal officials, beyond their involvement in other papal political or administrative business,[2] were already handling causes and participating in litigation both outside and at the curia. Thus, on one occasion, between 1147 and 1149, Eugene apparently sent a papal subdeacon, Simon, also a monk of Montecassino, on perhaps two missions to the monastery of Glanfeuil to oversee the election of an abbot there and enforce the house's subjection to Montecassino. In August 1149 the pope wrote to the abbot of Glanfeuil ordering him to observe 'the judgement (*arbitrium*) of our esteemed son and subdeacon, Simon.'[3] Likewise, in trial procedure, the protocol of Huesca described how both a subdeacon of the Roman Church and a clerk of the papal chancellor were

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[1] *IP* 1, 51/7; see also, for similar cases, *PL*, Eugene III, no. 185, 186, 187, 462, 542; Nachträge zu den PU in Italiens 5, no. 9 (*IP* 5, 464/20). See also, *PL*, Eugene III, no. 417, addressed to Abbot Suger requesting him to help finance the studies and absolve the debts of a Roman subdeacon, Mo. See also, the treaty between the papacy and the Romans, possibly of 1151; part of the terms of which stipulated that the Romans would 'swear fealty to [the pope] with a tribute (*beneficium*) of 500 pounds, in accordance with that which the Romans have been accustomed to swear to the Roman pontiffs. They will cause four men from the populace throughout every *contrada* to swear security and peace for you and for your property and all of the churches and all going to or returning from your curia and for the persons and property of the bishops and cardinals...' *Promissa Romanorum pontifica facienda*, Wibald, no. 347 (*Constitutiones*, 188-89, no. 134; *IP* 1, 180/9).

[2] By the popes' own accounts the subdeacons took part, along with the cardinals, in the elections of both Celestine II and Eugene III; see, *PL*, Celestine II, no. 2; *PL*, Eugene III, no. 1. In mid-October 1147 Eugene ordered the bishop of Olomouc to assist a papal subdeacon, John, in negotiating and composing a concord between the expelled duke and his brothers, 'if it should prove possible.' *PL*, Eugene III, no. 231. A John again, as 'subdeacon of the holy Roman Church and rector of Benevento,' occurred in *chartae* of April 1152 and April 1157; see the note to *IP* 9, *41/102.

[3] Glanfeuil Forgeries, Appendix, 251, no. 10 (*IP* 8, 180/257); also, Glanfeuil Forgeries, Appendix, 249, no. 9-9c (*Annales Casinenses*, 310; *IP* 8, *179/254); see also, H. Bloch, *Glanfeuil Forgeries*, 174-213.

chosen as advocates in the case between the bishops of Huesca and Roda conducted at the curia in early 1145.[1] And In an undated decretal letter, Eugene gave procedural advice to an unnamed papal subdeacon along with a *Magister* Omnebene over a case being conducted under them between the bishop of Bologna and the abbot of Padua.[2]

4.4 THE CARDINALATE AND EPISCOPATE IN CONJUNCTION

In several cases, as already alluded to, the cardinalate and episcopate were witnessed sitting or working in conjunction over causes.[3] This was demonstrated most clearly early on in the involved case between the canons and monks of S. Ambrogio, Milan. After Celestine II had delegated the case to the archbishop of Milan in October 1143, the archbishop, apparently feeling slightly out of his depth, quickly wrote back to the pope, announcing that he had received the pope's letters with due servitude and endeavoured, in yielding to his orders, to reform the peace between the monks and canons, requesting however that the pope deign to commit the matter to the legate in those parts, the cardinal-priest Goizo of S. Cecilia, or the bishop of Novara or Ivrea, 'so that their judgement might be obtained.'[4] In the next several months the archbishop would write at least twice to Cardinal Goizo with regard to advice or recommendations concerning the case.[5] In April 1144 Lucius II wrote to the archbishop that although Celestine II had delegated to him the controversy, 'truly, just we have accepted, the abbot, impeded in many ways, is not able to stand at present for a judgement.' Therefore, the pope ordered him 'to delay settling the cause up to the arrival of the legates whom we are sending to those parts, with the Lord aiding, very soon, so that then with their presence and counsel that which should be enacted over this, with the Lord providing, might be enacted.'[6]

Otherwise, sometime in 1144 the legate and cardinal-bishop Imar of Tusculum wrote to the archbishop of Rouen and all of the bishops, abbots, and sons of the Catholic Church throughout Normandy that he was making it known that the church of St. Wandrille had complained to him that the officers of the monks of St. Stephen, Caen had been 'acting deceitfully and committing fraud with regard to a tithe which the church of St. Wandrille has possessed from antiquity in the monastery of Caen and was committing an injury against them annually.' The

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[1] PUS2, no. 46.
[2] *PL*, Eugene III, no. 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 67; *IP* 5, 251/25, 181/6; JL, 9654); see above, ch. 3.3. See also, for papal subdeacons, *IP* 1, 198/5; *IP* 7/2, *108/4;
[3] For further examples of bishops and cardinals co-judging or otherwise cooperating in the same case which are not cited below, see, *PL*, Lucius II, no. 61, 68; *IP* 6/1, *267/15, 267/16, *268/19, 268/20.
[4] *IP* 6/1, *76/10 (JL, 8471), 77/11.
[5] *IP* 6/1, 77/13, 78/16.
[6] *APRI* 2, no. 379 (JL, 8571); see also, for the cause, *APRI* 2, no. 380 (JL, 8632), 382 (JL, 8654), 383 (JL, 8659), 384 (JL, 8660); *IP* 6/1, 76-80.

monastery had been accused essentially of doctoring its books with regard to its tithed goods by manipulating the bundles which were assessed for tithing. Having described the method of fraud, the legate announced that, 'in the presence' of the archbishop of Rouen and the bishops of Évreux and Sées, as well as 'other persons' who had then convened with him, and with the consent of the monks of both churches, a composition was made. Among the terms of the settlement, the letter stipulated that 'it has been established in our presence and conceded by the monks of Caen' that their 'men and servants' should make an annual security and oath that they would conduct themselves in such future affairs 'without injury and fraud.'[1] Under Eugene III, in April 1145, the legate and cardinal-bishop Alberic of Ostia wrote to the abbots of St. Médard, Soissons and the Cistercian house of Ourscamp: 'Let it be known to all, as much in the future as in the present, that in our presence and that of our confrère...the bishop of Soissons, the following pact has been undertaken and instituted between...the abbot of St. Médard, in his chapter with the assent of the entire chapter, and the prior and monks of Ourscamp in the place of their abbot.' The pact itself, it was stated, was duly 'fortified' with the seal of both the legate and the bishop of Soissons and confirmed with the 'useful testimony' of subscribed witnesses.[2]

Between the end of 1143 and the beginning of 1146 Celestine II, Lucius II, and Eugene III would all write numerous letters in an attempt to enforce a settlement effected originally by Innocent II, as early as 1134, between the churches of S. Alessandro and S. Vincenzo, Bergamo over the various temporal and spiritual jurisdictions in the city of Bergamo. In spite of the efforts of all four popes, spanning two decades, no satisfying resolution was had,[3] so that in late October 1145 Eugene III would write to Cardinal-priest Aribert of S. Anastasia, the bishop of Bergamo, and the abbot of Astino, providing a unique case of co-delegation to a cardinal, bishop, and abbot, by ordering them to convene as one, to summon both parties before their presence, 'and to strive diligently to inquire into and understand as much from the privileges as from the other complaints and accounts of both parties, and signify to us as fully as possible with your letters the truth of the matter. If truly the aforesaid cardinal should not be able to be at hand, nevertheless let you hear the cause with the abovementioned form and inform us as we have previously said.'[4] Nevertheless, in spite of this mixed delegation, the controversy persisted[5] so that in early 1151 the legate and cardinal-bishop Guido de Summa of Ostia would also pass a sentence between the two

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[1] PUF2, no. 27.

[2] *Cuius rei testes sunt: Theodericus abbas S. Eligii, Ernaldus abbas S. Crispini et abbas S. Leodegarii, Radulfus prior S. Medardi, Hugo subprior, Richardus tertius prior, Radulfus thesaurarius, Raimbaldus sacrista, Fulco armarius, Richardus et Symon pueri, Balduinus decanus, Wido de S. Petro Noviomi, Rainaldus miles, Rainaldus maior, Warnerus gener eius.* PUF7, no. 56.

[3] See, *PL*, Innocent II, no. 162, col. 213, no. 190, col. 240, no. 192, col. 242-44, no. 220, col. 268, no. 239, col. 287-88, no. 344, col. 394-95, no. 345, col. 395, no. 570, col. 631; *PL*, Celestine II, no. 10, 11; *PL*, Lucius II, no. 23, 24, 25, 41, 55; *IP* 6/1, *370/24, *370/25, *379/22.

[4] *PL*, Eugene III, no. 43.

[5] See, *PL*, Eugene III, no. 60, 76.

churches over four principal articles.[1]

At the end of 1144 Lucius II wrote to the abbess and sisters of Fontevrault opening by assuring them of the curia's longstanding special bond to their house, and continuing that 'indeed we have received your petitions with paternal kindness, and...we have suitably arranged to order our legates, whom we have arranged to send to those parts, to hear your complaints diligently and cause to be to produced for you that which justice should dictate. And also they should aid and maintain your place and those which pertain to it, and zealously exhort the powerful persons of that land to perform good deeds for you.' A separate cause however concerning the abbess was further reserved for specific provincial judges delegate: 'Moreover, we wish to notify your esteemed person that concerning the longstanding controversy between you and...the bishop of Angers...we grieve with paternal affection and, so that it might obtain a due end, we freely offer our labour, as much for your sake as for that of our brother. Thus it is that we are enjoining upon [the archbishop of Bo rdeaux] and the bishops [of Chartres, Soissons, Saintes, and Poitiers] to convene as one, within forty days after the forenamed bishop should return from the apostolic see, and settle the same controversy through a concord or judgement.'[2] The case demonstrated that there was no conventional procedure defining the interaction of cardinal legates and local and regional episcopal judges. Similarly, in April 1146 Eugene III wrote to the bishop of Vercelli reminding him that he had committed his controversy with the canons of his church to the former archbishop of Milan and the bishops of Asti and Ivrea. However, since the archbishop of Milan had meanwhile died before the business itself could be duly terminated, the pope re-committed the same business to the cardinal-priest Hugh(2) of S. Lorenzo in Lucina.[3] Eight months later, from Costa d'Adige, two presumably lay judges of Ferrara, from the command of an unidentified Cardinal Guido, settled a controversy between the abbot of S. Maria, Pomposa and the prior of the monastery of S. Cipriano, Venice, a cell of S. Benedetto di Lairone, over a certain possession.[4] And in another cause which has come to us only as a decretal entry, Eugene III wrote ca. 1150-52 to an unidentified cardinal-priest G. and the bishop of Arezzo, who had apparently mutually

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[1] *IP* 6/1, *361/22, 381/32. Another similarly prolonged cause involved the canons and bishop of Verona along with numerous other clerics and laymen of the region over various properties, including a *castrum*, money, and an assortment of related criminal charges: between 1145 and 1149 the bishops of Verona, Trent, and Vicenza, the patriarch of Grado, and Cardinal-priest Guido(5) Puella of S. Pudentiana would all become involved in the case in various capacities under papal orders; see, *PL*, Eugene III, no. 38, 39, 123, 124, 125, 134, 135, 243, 244, 270; *IP* 7/1, 236/14, *239/23; Nachträge zu den PU in Italiens 9, no. 6 (*IP* 7/1, 239/24; JL, 9333), no. 7 (*IP* 7/1, 239/25; P-H Iter, 246; JL, 9668).

[2] *PL*, Lucius II, no. 79.

[3] PU in Piemont, no. 4 (*IP* 6/2, 14/28); see also for this complicated case, JL, 8905; *IP* 6/2, *13/26, *14/27, 18/4, 19/9; *APRI* 3, no. 74 (JL, 8906), 75 (JL, 8916), 101 (JL, 9476).

[4] *IP* 7/2, *108/3 (*laudatum* in a *charta* of the same date); see also, *IP* 5, 184/16; *IP* 7/1, 344/61; *IP* 7/2, 109/7.

sought advice on the procedure of clerical oaths.[1]

In an interesting letter from October 1151 a lawyer-cardinal described an instance of his delegated court taking 'counsel' with a mixed group. From Siena, the *magister* and cardinal-priest Guido(5) Puella of S. Pudentiana wrote in the first person singular that he had 'heard and examined, from the mandate of the lord pope Eugene,' a controversy over a certain possession between the archbishop of Pisa and the bishop of Volterra, 'recognising the archbishop of Pisa as the just possessor, with the allegations and attestations of both parties having been repeatedly read and heard, and fully judicially examined, with the counsel of [the bishop of Siena and the cardinal-priest Gerard of S. Stefano in Celio monte] and a certain judge...who has taken part in the case, and many other wise judges of the city of Arezzo, who have not taken part in the aforesaid business.' The judgement was given, the letter closed, 'in the view of many upright and noble men from the clergy of both Pisa and Siena, in the palace of the aforesaid bishop of Siena.'[2] It is instructive that two Italian bishops, one, the archbishop of Pisa, a primate and papal legate, had seemingly willingly submitted their trial to a cardinal-priest, in this case a trained lawyer, who, nonetheless, perhaps on account of the dignity of the parties, sought the counsel of a diverse group. And in a last example, a mixed group of delegates were committed a cause not for sentencing but merely for execution. Sometime in 1153 Eugene wrote to the recently made cardinal-deacon of S. Eustachio, *Magister* Ildebrand, on account of undisclosed crimes by the people of Ferrara. The cardinal was instructed to proceed to Bologna and, with the bishops of Parma, Reggio Emilia, Mantua, Imola, and Faventino, solemnly interdict the entire diocese of Ferrara. In the meantime, they were instructed to conduct criminal investigations and publicly declare all parties found guilty. The case itself is obscure, but had apparently been previously delegated to the patriarch of Grado with specific procedural instructions. Unable or unwilling to effect these, the pope thereby re-delegated the case to an assorted tribunal, including a cardinal-deacon and five regional bishops, with specific instructions.[3]

By and large, the papal judicial system in this period operated through the three broad principal procedures of petition and trial at the curia, either in the pope's personal presence or not, delegation to cardinals and legates, and delegation to members of the provincial prelature. At times combinations of all types of procedure were ultimately employed in the course of a cause, creating an appearance of inefficiency. The system, clearly, in spite of the great demands which were already being placed upon it, was as yet not fully mature. On the other hand, the varied

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[1] *Decretales*, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506). For further instances of cardinals and prelates acting or sitting together on tribunals, see, *IP* 7/1, *273/2; *IP* 5, *239/5; also, *IP* 5, *278/3, *278/5, *278/6, 278/7.

[2] *Antiquitates* 3, 1167 (*IP* 3, 326/32); also, *IP* 3, *284/19.

[3] Kanonistische Ergänzungen zur *Italia Pontificia*, no. 66 (*IP* 5, 236/11); also *IP* 5, *236/10.

procedures which the curia utilised produced a high degree of procedural flexibility which was especially important given the logistical constraints of travel and communication, a law which hedged on the side of ensuring procedural fairness by attempting to protect parties rights of appeal in all cases, and a concomitant inability to ensure consistently prompt execution and lasting enforcement of sentences as well as settlements. The basic imperative was on what was perceived of as fair and rational procedure—a quest for *iustitia* which invariably involved the production of witness and especially documentary evidence. The result was a general procedure which could be circuitous and effectively elastic. Thus, in spite of the obvious shortcomings, in the ever-mounting onrush of business emanating from the provinces, the systems of delegation provided a necessary adaptability as the curia simply attempted to stay abreast of its workload. And impressively, as a further result, the institution of papal justice by the mid-twelfth century had succeeded in integrating a large part of the business of the Church into an increasingly sophisticated and global judicial network. This is seen especially in the system of provincial judges delegate.

5 *PAPAL JUSTICE AND JUDGES DELEGATE*

Roman Law differentiated between delegated and ordinary jurisdiction—powers proceeding from a special commission and those bound to a function—and the distinction eventually became accepted and retained by canon law.[1] K.W. Nörr noted that papal delegation of judicial authority was 'among those institutions which, though they were known in the Church for ages, were given new impetus and developed under the influence of scientific jurisprudence.'[2] K. Pennington added, however, that the 'canonists were struggling with legal concepts and ideas that they were just beginning to understand clearly.' Roman Law had provided many definitions, he noted, but classical jurists 'had never discussed legislative authority, jurisdiction, or delegated authority in any systematic fashion. Medieval lawyers had to work out a coherent theory for themselves,'[3] especially as 'Gratian' added almost nothing on the subject.[4] Its theoretical underpinnings notwithstanding, in practice by the mid-twelfth century a widespread and international system of provincial judges delegate, commissioned to handle a large part of the papal judicial case-load, was firmly established by the curia and operational, as a matter of everyday routine.

In an isolated case, concerning the monastery of Vézélay's complaints about undue exactions and violations of its rights against the count of Nevers,[5] there is evidence which suggests that the pope and curia preferred early on, at least in cases of this nature involving important parties, to delegate to cardinal legates, when possible, rather than simply provincial judges delegate. Firstly, in November 1144 Lucius II wrote to Bernard of Clairvaux ordering the abbot to warn on the pope's behalf the count of Nevers to desist from making undue exactions upon the monastery of Vézélay, 'or, in the presence of our venerable brothers, A[lberic] and I[mar], bishops of Ostia and Tusculum, legates of the apostolic see, let him receive from the same abbot [of Vézélay] in accordance with the terms of the privileges of the apostolic see that which justice will have dictated. And, if he should not be willing to accept this, we shall not be able to allow the monastery itself to be oppressed so unjustly.'[6] Then, between 1145 and 1147, Eugene III wrote

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[1] G. Le Bras, *Le droit romain*, 390-91, cited by J. Sayers, *Judges Delegate*, 100.
[2] K.W. Nörr, *Jurisprudence*, 332.
[3] K. Pennington, *Papal Monarchy*, 43.
[4] See, Gratian, *Decretum*, C. 2 q. 5 c. 17 (JL, 8289), a commission of delegation to five imperial bishops and the patriarch of Aquileia, which was not in 'Gratian I's' first recension of the *Decretum*; in fact, all of *questio* five, which considered the appropriateness of clerical *purgatio*, in which context this particular canon was likewise cited, was an addition of the second recension; see, A. Winroth, Decretum, 207.
[5] See, *PL*, Lucius II, no. 11, 47, 68; *PL*, Eugene III, no. 145-51, 274-75, 398-401, 422-25, 487-88, 514, 528, 531, 552, 557; JL, 8989; see above, ch. 2.6.
[6] *PL*, Lucius II, no. 68.

directly to the count of Nevers, ordering him to cease harassing the abbot or monastery of Vézélay. Again, however, perhaps given the complications of the case, the pope did not deny the count his rights of due process, and if the count wished to persist with his claims, the pope offered that he, along with the abbot of Vézélay, stand for trial in the presence of the legate Imar, 'who is about to return soon through those parts, with the Lord providing;' or, 'if by chance the same legate should put off his return too far, which we by no means anticipate, it is our wish that the same business be discussed and defined, through the mediation of justice, in the sight of...the archbishop of Reims...the bishop of Langres...and...the abbot of Clairvaux.'[1] In this case, therefore, while Eugene showed an apparent unwillingness to alter completely Lucius' previous orders, but perhaps better understanding the urgency of the case as well as the availability of the cardinal legates in question, he was ready to defer the matter to provincial judges.

As a matter of routine practice, the amount of judicial business reaching the curia from the provinces by this period was so considerable that it had become untenable to attempt to reserve judicial proceedings and judgements as much as possible for the direct administration of the pope or his own officers, especially cardinal legates who were necessarily limited in the amount and extent of their legations. In this sense, the growth of the system of judges delegate was owed in large part to the steady increase and expansion of the judicial *negotia* of the curia. Thus, in the absence of legates who could consult local authorities on the particular details surrounding a cause, volume dictated that various procedural requirements, including the accessibility of reliable evidence, as well as a practical realisation of the curia's inherent ignorance of local conditions, would speed the development and implementation of the system—whether or not such concerns were affected by a growing influence of lawyers in the curia. Similarly, when causes brought to the curia at great distances were conducted and terminated at the curia there remained a greater potential for fraudulent or evasive litigious tactics. Beyond this, there were financial and logistical burdens inherent in conducting and terminating causes at considerable distances which a system of delegation helped to allay by sparing litigants, as well as the subsidiaries of their causes, the costs, toil, and hazards of the 'Roman' trip. And yet the papacy, despite costs, potential abuses, and overstrain, could never dismantle outright the system of appeals which kept the pope directly or indirectly in touch with the local churches and 'gave substance to his *primatus* and *magisterium*.'[2] But because the commissions of judges delegate derived from the pope, the right to appeal and the principle of papal primacy were maintained and even underscored. Concomitantly, by the 1140s the episcopate as a whole had ceased to be regarded with suspicion, but rather was being integrated into all papal business on a massive scale. The sum result was that, by ca. 1145, various

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[1] *PL*, Eugene III, no. 147. The same was sent to King Louis VII of France, continuing with a request that he use his power to restrain the count: *PL*, Eugene III, no. 148.
[2] I.S. Robinson, *Papacy*, 199.

circumstances had converged to recommend the delegation of a considerable amount of the causes referred to the curia back to judges in the provinces whence the causes themselves had originated.

The earliest detailed evidence of the use of provincial judges delegate—though not yet designated by this formal title—comes from the pontificate of Innocent II, as early as 1131.[1] Alexander III and Celestine III ultimately attempted to define the system legally until it was codified in the *Decretales* of Gregory IX, based largely on the pronouncements of those two pontiffs, principally Alexander III. Alexander ruled that the jurisdiction of judges delegate was superior to that of both the ordinary, usually the bishop or archdeacon, and the metropolitan, while simultaneously extending authority to the delegate over persons who, though not involved in the original case, might have attempted to impede the investigation. Celestine III thereafter ruled that legates were superior in status to judges delegate, but could not alter their judgements.[2] Meanwhile, under Innocent II's successors and Alexander III's predecessors, the system was being increasingly put into routine practice. Indeed, by 1147, in a singular example from the period 1143-53, the future official nomenclature for the system was first given use by the papal chancery. Writing to Louis VII of France, Eugene III admonished the king to restrain the count of Nevers from assailing the church of Vézélay and its goods, and to cause the count's own men to compel him towards the same end. But, he added, if the count would maintain his justice, the pope would strive to provide it for him *per nos aut delegatos judices*.[3] And in total at least 142 distinct papal letters of the period 1143-53 either evinced or unmistakably implied the use of the system: nearly twenty-eight percent of all papal letters concerning clerical controversies.

Number of Letters:	Evincing the Employment or Application of the System of Judges Delegate (Excluding Members of the Curia):	% of the Total Letters Concerning 'Clerical *Controversiae*'

[1] See, PUF2, no. 10; JL, 7511; Gratian, *Decretum*, C. 2 q. 5 c. 17 (JL, 8289); see, M.G. Cheney, *Avranches*, 178-80; J. Sayers, *Judges Delegate*, 7, 9; I.S. Robinson, *Papacy*, 192-93.

[2] *Decretales*, Gregory IX, Bk. 1. XXIX. 1-18, Bk. 1. XXX. 2 (JL, 17,667); also, I.S. Robinson, *Papacy*, 194-95, who noted that 'not only on the subject of delegation but in all other matters touching the pope's judicial supremacy Alexander III was the foremost legislator of the twelfth century;' J. Sayers, *Judges Delegate*, 100, who noted that Alexander III was the next great legislator on the subject after Innocent III; also, C.N.L. Brooke and A. Morey, *Foliot and Letters*, 243. On judges delegate in general, see, J. Sayers, *Judges Delegate*; A. Morey, *Bartholomew of Exeter, Bishop and Canonist: A Study in the Twelfth Century* (Cambridge, 1937), 44-78; I.S. Robinson, *Papacy*, 175-76, 192-98; C.N.L. Brooke and A. Morey, *Foliot and Letters*, 230-44; M.G. Cheney, *Avranches*, esp. 177-85; *The Letters of John of Salisbury* 1, xxxiv-xxxv.

[3] *PL*, Eugene III, no. 150.

Celestine II and Lucius II	36[4]	34.3
Eugene III—Through 1146	32[2]	30.8
Eugene III—1147-8 July 1148	6[3]	7.4
Eugene III—After 8 July 1148 and Undated	68[4]	30.2
Eugene III—Total	106	25.9
Total	142	27.6

In light of these numbers, J. Sayers, who noted in her study on English judges delegate in the early thirteenth century that delegation was possibly extended by Eugene, perhaps misjudged the extent of this expansion when she stated that it was only under Alexander III, with the increase in first-instance cases, that the system really got under way.[5]

5.2 THE EPISCOPATE AND DELEGATION

The great majority of papal letters of the period 1143-53, beyond the privileges of protection which were by definition of a temporal nature, concerned directly or indirectly clerical temporalities: in most cases arising in the context of the pope attempting to effect reparations or satisfaction for various violations or *ablata*; or adjudicating between clerical and even lay

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[1] *PL*, Celestine II, no. 3, 25, 44, 46; *PL*, Lucius II, no. 10, 11, 19, 40, 56, 68, 79; JL, 8508, 8696, 8698 (*laudatum* in a letter of Eugene III, Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 364, no. 932 [JL, 8780]); *IP* 2, *158/11; *IP* 3, *337/30; *IP* 5, *60/202, *60/203; *IP* 6/1, *76/10 (JL, 8471), *79/23, 79/24, 80/25, *252/3, *267/15, 267/16; *IP* 10, *339/24; *APRI* 2, no. 379 (JL, 8571), 380 (JL, 8632), 382 (JL, 8654), 383 (JL, 8659), 384 (JL, 8660); Archives historiques du Poitou 3, 9, no. 6 (JL, 8528), 9, no. 7 (apparently not in JL); PUE1, no. 29; PUF2, no. 27; PUF5, Nach. Gott., no. 17.

[2] *PL*, Eugene III, no. 11, 18, 36, 37, 43, 72, 114, 127, 134, 135, 147, 148, 150; *IP* 6/1, *370/24; *IP* 6/2, *13/26, *14/27; *IP* 7/1, 236/14, *273/2; *IP* 7/2, *108/3; Archives historiques du Poitou 2, 33-34, no. 21 (JL, 8842); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 364, no. 932 (JL, 8780); PUE3, no. 47, 48, 49, 54, 58; PU in Piemont, no. 4 (*IP* 6/2, 14/28); PUF5, no. 62, 69 (JL, 8823); PUF2, no. 36, 37, 41.

[3] *PL*, Eugene III, no. 152; JL, 9201 (*PL*, Eugene III, no. 263); Archives de l'Orient latin 2, 253, no. 1 (JL, 9165), 253-54, no. 2 (JL, 9166), 255, no. 4 (JL, 9241); PUF2, no. 48.

[4] *PL*, Eugene III, no. 329, 350, 362, 366, 372, 374, 386, 387, 395, 398, 399, 400, 401, 403, 422, 423, 425, 452, 453, 459, 460, 468, 485, 486, 487, 512, 514, 541, 552, 574; JL, 9432; *IP* 3, *271/1; *IP* 5, *236/10, *278/5, *278/6, 278/7, *527/1; *IP* 6/1, *325/13, *339/1; *IP* 6/2, *32/4, *136/20; *IP* 7/1, *323/1; *IP* 7/2, *104/4; *IP* 9, *95/50; *Decretales*, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506); Kanonistische Ergänzungen zur *Italia Pontificia*, no. 66 (*IP* 5, 236/11); *APRI* 3, no. 95 (JL, 9580); *EPRI*, no. 213 (JL, 9733); Archives historiques du Poitou 3, 20, no. 14 (JL, 9314), 20, no. 15 (JL, 9315); PUE3, no. 79 (JL, 9547), 90; PUE2, no. 64 (JL, 9433), 69 (JL, 9546), 71 (JL, 9591), 72 (JL, 9611), 73 (JL, 9503); PUF2, no. 70; PUS1, no. 59, 61; PUS2, no. 67, 68; PU in Pisa, no. 4 (*IP* 5, 62/213); PU in Piemont, no. 7 (*IP* 6/2, 215/12); Nachträge zu den PU in Italiens 9, no. 7 (*IP* 7/1, 239/25; P-H *Iter*, 246; JL, 9668); Le bolle pontificie, Montecassino, no. 20 (*IP* 8, 180/260), 21 (*IP* 8, 181/261).

[5] J. Sayers, *Judges Delegate*, 9; see also, G. Barraclough, *Papacy*, 104. W.J. La Due also pointed out the coterminous expansion in the issuing of papal mandates under Eugene III and of royal writs under Henry II of England: W.J. La Due, *Papal Rescripts of Justice and English Royal Procedural Writs, 1150-1250: A Comparative Study* (*Pontificia universitas Lateranensis: Institutum utriusque juris*: *Theses ad lauream* 155: Rome, 1960), cited by, J. Sayers, *Judges Delegate*, 65 n. 7.

contestants over certain possessions. Again, a great part of these causes, in turn, were delegated by the curia to other prelates, principally the members of the episcopate. At the same time, the relative dearth of papal correspondence and decrees concerning the direct spiritual and pastoral 'care' of the Church and its various houses and clerics not merely reflected the papacy's priorities, but suggests that those concerns were being competently and sufficiently addressed at the diocesan level, or that the curia was content to leave them there. More than anything, however, this was the nature of the procedure of petition by which the pope and curia almost exclusively governed. And the fact that so many clerics including prelates were bringing so much of this type of temporal and judicial *negotia* by petition to the curia reflected just how the Church in general regarded the primary function and utility of the curia and papal primacy. But the paradox of papal authority was that, again, in practice, the curia most frequently fulfilled its duties and responded to the calls of clerics by simply referring or re-allocating causes back to the local or regional prelacy. In many such cases, the function of the utility of papal authority rested largely in its ability to rally, muster, and coordinate multiple local agents and provincial authorities and functionaries—including the secular powers—along with their own powers of coercion. The pope sanctioned their authority and powers of coercion and bolstered them with the resource of the threat or sentence of the pope's ultimate anathema. Further, the parties of many causes crossed diocesan boundaries, prompting jurisdictional complications: papal authority, and its powers of commission, could cut across these borders.

The episcopate, wrote R.W. Southern, 'ground though it was between the upper and nether millstones of pope and king,' was 'the most varied and complicated body in the medieval Church.'[1] Indeed, the bishops' duties were numerous and manifold.[2] On the papacy's side, while commissions to delegates could impart jurisdictional authority which transcended their ordinary spheres of competence, just as often it confirmed and commissioned the members of the episcopate merely within their own ordinary spheres of jurisdictional competence. In either case, bishops were being used as field-agents in versatile ways and in a variety of contexts, enlisted to perform or discharge specific and less-specific papal mandates or 'requests:' occasionally they were called upon to reform lapsed houses and correct discipline; to establish or install orders of canons regular; to make provisions for clerics; to see to various operations associated with the crusade; to superintend kingdoms in the absence of princes; to rouse the people to make collections for the military orders; to collect papal *census*; to protect pilgrim traffic; to attend to the papacy's own diplomatic-political affairs; or to forge peace or treaties between lay princes.[3] Most commonly,

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[1] R.W. Southern, *Western Society and the Church*, 172.

[2] See, C.P. Schriber, *Arnulf*, 52-53.

[3] Numerous *arengae* addressed the function, duty, or role of the episcopate or episcopal office; in some regards, these statements could be regarded as papal manuals for the episcopal office. As an example, every extant chancery letter of March 1144 save one (*LC*, 403-04, no. 124 [*Antiquitates* 4, 241-42; *IP* 3, 482/1])

however, the curia enlisted bishops in their policing function vis-à-vis various forms of malfeasance: to 'administer justice (*facere iustitiam*)' or coerce or compel various offenders in violation of some other's *ius* or property; or, similarly, to execute or enforce papal decisions or confirmations, at times in the face of resistance. Similarly, numerous papal letters simply proceeded *ex parte*, that is, on the basis merely of some plaintiff's complaint, and instructed bishops to act accordingly in his interest. While such cases may have concerned papal and episcopal justice, they did not necessarily concern adjudication or litigation: such cases were not being delegated 'to be heard and terminated.' This was one side of papal justice: causes concerning plaints or simple complaints (*querimoniae*) without direct reference to litigation; sometimes in response to the apparent ineffectiveness of a previous judgement. The distinction between these various systems of justice, or forms of delegation, could often times appear slight or hazy.[1]

Accordingly, the development of the system of judges delegate, which involved litigation, would have been a reasonable extension of all other forms of delegation and commission. So long as, presumably, a bishop or prelate was supposed in the curia to have sufficient legal competence or advisors, it would have been a natural step to write to a bishop thus, as it was sent to the archbishop of Bordeaux in March 1144, in response to some cause having arrived at the curia on appeal or in the first instance:

> We wish to inform your fraternity that we have committed to your esteemed person to be heard and terminated the controversy which is being prosecuted between...the bishop of Poitiers...and...the abbot of St. Cyprien over certain churches and possessions. Therefore, we order your discretion...at a congruous place and time, having summoned both parties before your presence, to hear diligently there and then the cause itself and strive to terminate it with a judgement or concord.[2]

Since local bishops were presumably responsible for enforcement or execution of a sentence in any event, it would have saved the curia a great deal of time and trouble in hearing, investigation, and consultation to delegate a cause, or its parts, outright, especially if it was a particularly busy period of business at the curia, or if the cause itself had emanated at a great distance or presented particular procedural or evidential difficulties. Indeed, delegation in certain instances clearly occurred only after some initial impediment to the adjudicatory process at 'Rome.' At the same

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concerned the episcopal office: *PL*, Celestine II, no. 46; *PL*, Lucius II, no. 10, 11, 13 (JL, 8551, for the date), 14 (JL, 8558, for the date); JL, 8508, 8526, 8529, 8537, 8539, 8545, 8548, 8552, 8553; *APRI* 3, no. 55 (JL, 8516); *EPRI*, no. 187 (JL, 8547), 188 (JL, 8554), 189 (JL, 8555); PUS1, no. 53 (JL, 8546); PUF6, Nach. Gott., no. 11 (JL, 8542), 12 (JL, 8543); Archives Historique du Poitou 3, 9, no. 6 (JL, 8528). Further, of at least thirty-five extant privileges of protection issued for the entire month, at least ten were issued to members of the episcopate: *PL*, Celestine II, no. 49, 50; *PL*, Lucius II, no. 2, 5, 7, 15; JL, 8532, 8533; PUS2, no. 44; PUF1, Nach. Gott., no. 24 (JL, 8523); see also, JL, 8534. Only two more extant letters were issued through 14 April: *PL*, Lucius II, no. 19 (8 April); *APRI* 2, no. 379 (JL, 8571) (14 April).

[1] It should be emphasised that the above chart providing the statistics for judges delegate of this period included only instances of cases delegated for actual judicial examination and or termination—that is, for litigation or adjudication.

[2] Archives historiques du Poitou 3, 9, no. 6 (JL, 8528).

time, delegation in any form still involved the curia to some extent in a case's procedure, if in nothing else than the process of choosing judges and forming and sealing the mandate of delegation. Similarly, delegation could only delay resolution of a cause, as judges wrote back to the curia for procedural clarification, or parties objected and lodged second appeals on a myriad of bases, including the competence and impartiality of the judge delegated, thus only further clogging up the machinery of the offices back at the curia. At the same time, it must be asked why a plaintiff endured the hardship and expense of travelling to the curia only to have his cause sent back with him whither he came. These matters will be taken up at length. Ultimately, however, it must be assumed that, in the context of the curia's refusal to alter the prevailing procedures of appeal, any added difficulties or energy consumed by the processes of delegation at the curia were far and away offset by the system's overall efficiency and utility, insofar as the curia was concerned, so that its use in the period 1143-53 would affect a diffuse geographical area of the Latin world.[1]

	FRANCE[2]	ITALY	GERMANY[3]	ENGLAND	SPAIN
Archbishops of:	8	5	3	1	2
Archbishops: Number of Letters in Which Implicated as a Judge Delegate:	28	27	8	9	3
Bishops of:	22	11	5[4]	5	1
Bishops: Letters:	61	21	6	9	1
Abbots of:	6	4	2	0	0
Abbots: Letters:	16	4	2	0	0
Other:	1	9	0	0	1
Other: Letters:	1	9	0	0	1
Total: Judges:	37	29	10	6	4
Total: Letters:	106	61	16	18	5

Nevertheless, despite the patently regular employment of the system itself, the regular details regarding procedures for instigating a commission to a judge delegate are, for this early period, obscure. By ca. 1200, for a petitioner to open a suit before a papal judge delegate, if he

[1] For the following table, see, Appendix 4.
[2] That is, modern France, including the bishopric of Metz.
[3] Not including the bishopric of Metz, which is today in France, but including those sees which are today in Austria.
[4] Including two letters of delegation to the Moravian bishop of Olomouc, and one letter to the Burgundian bishop of Lausanne.

chose not to seek a hearing at Rome, it was necessary for him to procure a mandate from the pope—the petition which was presented was probably at this point in time a written one—this was the *impetratio*. He could do this in person or through a proctor, and the petition would name judges in order of preference. Nevertheless, the particular method or choice of action of the petitioner was not always clear; and personal contacts could probably ease one through the network of formal approach.[1] Once the delegated case was commenced in the locale, procedure was long and complicated, with many delaying mechanisms built into it for the defendant, making legal evasion relatively facile. Dilatory exceptions, a legal procedure, were directed against the conduct of the action, and not the right on which the suit was founded.[2] But these procedures are known only for a later period; while the papal letters of the early period of the system have yet to be analysed comprehensively with an eye towards the workings of that system. From those letters a far hazier picture of the system presents itself; and it was almost certainly considerably more improvisational and procedure less structured and defined.

K.W. Nörr, for instance, wrote that it was only from the time of Alexander III that 'the juridical instruments become available to give a thoroughgoing legal form' to delegation and to the form of the letters connected with it, 'from the fundamental principles down to the smallest details.'[3] According to M.G. Cheney, on the other hand, while the system of delegation under Innocent II was 'only in its infancy,' and the commissions for judges were 'still obviously devised for each individual case,' under Lucius II a form of commission appeared which would remain in use, with minor alterations, for the rest of the century, concluding that the common form was developed to such an extent that by this period such letters 'must have been issued by the papal chancery in considerable numbers.'[4] J. Sayers, however, while basically echoing these observations, carefully added the qualification that this should not be exaggerated.[5] Nevertheless, from Eugene III's pontificate, Cheney continued, commissions showed certain further minor changes of form: it became the rule to address the mandate jointly to two judges, and the phrase *per apostolica scripta* replaced the older *per praesentia scripta*.[6] J. Sayers further noted that in the 1140s mandates often demanded or commissioned delegates to undertake an investigation of fact only; and if a decision was to be made, the pope 'clearly defined how the judge delegate should proceed and what ruling should apply in the event of certain facts being proved.' If the judges had

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[1] J. Sayers, *Judges Delegate*, 13-14, 54.
[2] J. Sayers, *Judges Delegate*, 42-99.
[3] K.W. Nörr, *Jurisprudence*, 332- 33; see also, M.G. Cheney, 'Pope Alexander III and Roger, Bishop of Worcester, 1164-1179: The Exchange of Ideas,' *Proceedings of the Fourth International Congress of Medieval Canon Law*, ed. S. Kuttner (Vatican City, 1976), 207-27, here at, esp. 226-27.
[4] M.G. Cheney, *Avranches*, 179.
[5] J. Sayers, *Judges Delegate*, 7 n. 2.
[6] M.G. Cheney, *Avranches*, 180; cf., J. Sayers, *Judges Delegate*, 7, who added more correctly, 'the number of judges to whom the mandate was addressed had not yet settled down to three.'

any doubt as to how to proceed, reference might be made to Rome.[1] She added further that it was only in Alexander III's pontificate that 'certain stereotyped phrases' began to appear.[2] In actuality, in comparison to the whole body of extant papal letters of delegation of the period 1143-53, the observations of each of these writers were partially accurate.

To begin with, while the chancery in the period 1143-53 does not appear to have used consistently any standardised or terse form letter for delegation, simple forms as shown in the example given above were sometimes used.[3] And in several instances essentially the same letter, with only minor variations regarding the personal particulars of the addressee, could be sent to multiple destinations. However, the mandates of delegation on the whole, as with almost all letters of justice, do appear to have been drafted more or less specifically for the cases at hand and as such were rarely entirely impersonal. Similarly, while the papacy at mid-century was regularly delegating causes back to the provinces for litigation, and the language of the mandates suggested that the pope did not doubt that the practice and his right to do so was either legitimate or established, it was the pope's right to delegate that was established; and there is no consistent evidence of delegation occurring through the direct or initial instigation of a petitioner. Thus, while the curia delegated confidently, it did so apparently largely for purposes of expediency; and the procedural instructions vis-à-vis the mandate suited this 'policy.' These mandates thereby, while seldom including thorough details of the procedural history of a particular cause leading up to the point of delegation, provided more or less detail and case-specific procedural instructions, often times dependent upon certain contingencies, although statements of greater legal principle, which might have formed the basis of decretals, were not common.[4] Everything depended upon the circumstances of the particular case, and in this way most of the mandates of delegation were not always distinguishable from other letters, or letters of justice.

For instance, orders of delegation could occur in a letter in context with other or related causes or commissions; and the judge could be instructed to proceed to trial upon certain contingency, or as a last result, if he should not be able to administer justice otherwise. In rare instances, in fact, a judge could be commissioned simply to investigate, and send offending parties to the curia; or the principal question could reserved for the curia and only a particular aspect of the cause delegated, or vice versa. And in practice, the same cause could be re-delegated back to same bishop on second appeal. Otherwise, and again in rare instances, a judge could be instructed to report back to the pope the result of the cause; deadlines for appearing before the tribunal could be mandated to be enacted; and instructions could be included concerning witnesses or

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[1] J. Sayers, *Judges Delegate*, 34-35.
[2] J. Sayers, *Judges Delegate*, 7-9.
[3] Archives historiques du Poitou 3, 9, no. 6 (JL, 8528).
[4] See, *Papal Decretals relating to Lincoln*, xviii.

documentary evidence: a delegate could be instructed to order the instruments of the parties to be brought to trial. Generally, enforcement or execution of the decision or settlement was left without stipulation,[1] although the delegate could be commissioned to issue punishments against potential refractory parties with certain provisos stipulating excommunication, 'coercion' or *districtus*, or an *ecclesiastica* or *canonica censura*'—or the order could be included simply *facere iustitiam*. The pope could also include his own contingent threat, should one or more of the parties fail to comply with the judge's resolution. By and large, execution of a sentence or settlement appears to have become a primary concern only once it was resisted and grievance was brought back to the curia, or in the suspicion of evasion on the part of one of the parties. Thus, in total, when C.N.L. Brooke noted that 'there is an atmosphere of informality and improvisation' about the activities of Archbishop Theobald of Canterbury as a judge delegate, this was due to a certain extent to the state of the development of the system as commissions were issued from the chancery.[2] However, despite the overall individuality of most of the letters of delegation issued in this period, case-specific procedural instructions were not included as a firm rule, otherwise suggesting a confidence that the bishops, as judges in their own diocesan courts, would be competent enough to see to all remaining aspects of procedure in a suitable fashion—otherwise, they could refer to Rome.[3]

In sum, procedural instruction or the specific clauses of delegation in the letters of delegation of the period 1143-53 remained largely variegated, with varying degrees of elaboration within each particular mandate. However, within each mandate the inclusion of various permutations of emerging stereotyped phrases, formulae, and terminology was also a marked feature. Judges were commonly instructed, for instance, in various combinations: *utraque parte ad tuam praesentiam evocata*, often *congruo loco et tempore*; *allegationibus ac rationibus utriusque partis diligenter auditis*, or *inquisitis*, *examinatis*, *cognitis*, or *plenarie intellectis*, often times *hinc inde*. Or a letter might simply enjoin upon the delegated judge to 'inquire into,' 'hear,' or 'discuss' the cause, or 'the truth of the matter.' From this point the judges were typically instructed simply to 'settle,' 'define,' or 'terminate,' or 'strive to terminate' the cause with a 'canonical' or 'due end,' either by judgement or concord, or perhaps *ordine iudiciario*, or *Domino*

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[1] According to J. Sayers, *Judges Delegate*, 155-61, by the mid-thirteenth century, execution including compulsion was left to the local ordinary and his officials, down to rural deans, who were granted the power to deal with any impeders—excommunication was the usual penalty. The judges delegate were instructed by the pope to ensure that their decisions were carried out; and to this end, they were given great powers over their temporary officers. And though the judicial powers of a judge delegate were necessarily circumscribed, their administrative powers over the conduct and subsidiaries of the case were almost unlimited.

[2] *The Letters of John of Salisbury* 1, xxxiv.

[3] See, J. Sayers, *Judges Delegate*, 10. On the mid-twelfth century English bishop, Gilbert Foliot, C.N.L. Brooke and A. Morey added that, as a lawyer, he would have had 'a coherent idea of canonical procedure based on Roman Law.' C.N.L. Brooke and A. Morey, *Foliot and Letters*, 244, also, on bishops and procedure, 52-69, 230-44.

auctore, or *media aequitate*, or *iustitia mediante*; perhaps also with right of further appeal removed—*appellatione remota*. In some instances, a judge was simply commissioned a case 'to be heard and terminated;' or conversely, and in rarer instances, to investigate a complaint and proceed contingently, *si rem ita inveniris*.[1] And on the whole, delegates were only rarely not commissioned to terminate the cause.

In other aspects, the phrase sanctioning the mandate of delegation *per praesentia scripta*, contrary to M.G. Cheney's findings, occurred actually considerably more often than *per apostolica scripta*—within all of the letters generally these phrases were used interchangeably. Also, the tribunals do not appear to have been fixed at three as a rule—most cases of delegation from this period have come to us in a single extant letter issued to a solitary prelate, without reference to any 'co-judges.'[2] In practice, nonetheless, it appears that the tribunal could range from one to several judges, although, procedurally, the *si non omnes* clause was rare—stipulating that if one or more of the judges should not be able to appear, the rest retained the full authority of proceeding with the cause. There was, again, furthermore, very little information that the parties had a part in selecting the judges; nor that the petition was actually impetrated expressly for delegation—that is, that delegation did not occur on the initiative of the pope. J. Sayers noted that, although it is considered to have become standard practice by the early thirteenth century, it is unknown whether in the twelfth century judges were deputed by the pope or chosen by the parties. The earliest suggestion that an applicant had anything to do with appointments came from the pontificate of Alexander III, she maintained, when a party was found suggesting a judge.[3] A. Morey also concluded that this was abnormal in his consideration of Bartholomew of Exeter as a judge delegate (1161-84), but that it is common to find after 1198 forms of petitions to the curia making mention of preferred judges.[4] In fact, early on, there were clearly anomalies. When Abbot Hariulf of Oudenbourg came to the curia in 1141, he, as the plaintiff, and Innocent II eventually held a lengthy discussion together about suitable judges delegate to whom his case might be delegated: 'three religious men from the land of the Franks.' When prompted to nominate specific candidates, the abbot initially informed the pope of his 'adversaries,' those to whom he would not

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[1] On this and the following, for citations, see, ch. 6.4.

[2] A. Morey and C.N.L. Brooke and A. Morey noted that in many cases Gilbert Foliot was the sole judge delegated. C.N.L. Brooke and A. Morey, *Foliot and Letters*, 243.

[3] According to J. Sayers, *Judges Delegate*, 109-10, 118, by the early thirteenth century it was probably normal practice for the plaintiff to name the judges he wanted, and unless objection was made by the defendant's proctor, the curia appears to have appointed as the plaintiff suggested. With the increase in the number of cases being taken to Rome by the turn of the century, applicants mentioned names of judges from the lower grades of the ecclesiastical hierarchy, going all the way down the scale, eventually, to rural deans.

[4] A. Morey, *Bartholomew of Exeter*, 48; also, J. Sayers, *Judges Delegate*, 109.

like the cause delegated, while suggesting three others whom he would accept.[1] Similarly, in a lengthy papal document of June 1152, the pope recounted for the abbess of S. Giulia, Brescia that the bishop of Cremona had requested the bishop of Reggio Emilia to hear their cause: 'Therefore, the controversy which was being prosecuted between you and...the bishop of Cremona...over the church of Cicognaria, we committed to be terminated, to the petition of the same bishop, to...the bishop of Reggio Emilia.'[2] Nevertheless, these examples were exceptional; and otherwise the terms of the letters of delegation gave no indication whether delegation in this early period resulted from papal initiative or not.

Lastly, the delegates in the period 1143-53 were almost always members of the episcopate, with several reoccurring personalities and offices.[3] This was not however a strict rule, although only twelve different abbots have been identified here in this period in the capacity of papal judges delegate,[4] most prominently Abbots Bernard of Clairvaux and Suger of St. Denis. Beyond this, there appear to have been further anomalies, as there is some evidence that the pope was already delegating to ecclesiastics below the level of the prelature. Thus, according to a letter of 1158 Eugene III commissioned a northern Italian provost to decide a cause between an archpriest and an abbot.[5] And in another instance, a case in 1151 was delegated to *Magister* Bulgarus, the same Bolognese *doctor* who had dedicated his *Ordo iudiciorum* to the former chancellor Haimerc (1123-41).[6] Apparently even the cardinal-bishops could initiate delegation; and thus, according to a letter of 1157, at the beginning of 1151 the legate and cardinal-bishop Guido de Summa delegated (*delegare*) to the archpriest and archdeacon of the major church of Brescia to 'receive and hear the witnesses' concerning a certain cause.[7] And earlier, in December 1146, two judges, presumably laymen, of Ferrara, from the command of an unidentified Cardinal Guido, decided a controversy between an abbot and a prior of Venice over a certain possession.[8] Similarly, and in a rare instance, lay judges could apparently sit alongside legates. Thus, in May 1149 the pope wrote to three lay judges of Piacenza committing to them, along with Cardinal Guido de Summa, a controversy 'to be heard and terminated' between the canons of the church of S. Antonio, Piacenza

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[1] The chancellor Cardinal Haimeric (1123-41), however, quickly stepped in and vetoed in turn each of the abbot's nominations for various reasons: one, the bishop of Laon, because he had 'obtained that no cause beyond his own should be imposed upon him,' suggesting that the institution of the judge delegate was sufficiently developed by 1141 for a prelate to have gained exemption from the office. *Der Bericht des Abtes Hariulf von Oudenburg*, 102-13; see also, I.S. Robinson, *Papacy*, 193.

[2] *PL*, Eugene III, no. 512; also, *IP* 6/1, *325/13.

[3] See, J. Sayers, *Judges Delegate*, 9, 125, 148, where she rightly echoed that the early judges were almost always bishops.

[4] See, Appendix 4.

[5] *IP* 5, *527/1 (*laudatum* in *IP* 5, 527/2 [1158]).

[6] *IP* 7/1, *323/1 (*laudatum* in a *charta* of 7/8/51); see, E.H. Kantorowicz and W.W. Buckland, *Glossators*, 68; J. Sayers, *Judges Delegate*, 45 n. 1.

[7] *IP* 6/1, *339/1 (*laudatum* in a *charta* of 1157).

[8] *IP* 7/2, *108/3; see, *IP* 5, 184/16; *IP* 7/1, 344/61, *IP* 7/2, 109/7.

and the former bishop of Piacenza over a certain land.[1]

A case-study for the interplay between the court of Rome and that of a judge delegate, demonstrating the sometimes confusing if not convoluted processes of procedure, was provided by an uniquely lengthy and detailed papal 'rescript' of delegation addressed shortly before Eugene III's death to the archbishop of Tarragona, the bishop of Girona, and Raymond de Arènis, a *magister* who would be promoted to the cardinalate by Adrian IV.[2] The letter opened with the pope informing the delegates that the longstanding cause between the bishops of Pamplona and Zaragoza over several churches, 'just as we trust to have come to the notice of certain of you,' had originally been committed by the pope to the archbishop legate of Tarragona alone, and followed with a brief recapitulation of those preliminary proceedings: the archbishop legate had, in accordance with the terms of a papal letter, summoned both parties before his presence. The bishop of Zaragoza, accordingly, appeared at the legate's summons, prepared to abide by a judgement; while the bishop of Pamplona merely sent to the designated place the prior and archdeacon of his church, who excused their bishop's absence on the grounds that, having already been summoned by the pope on account of other causes, he was thereby already in the process of journeying to the curia and so was sending in advance instead through his representatives all of the instruments which they had prepared germane to the cause at hand.

Significantly, therefore, while one party had come 'prepared' to accept any judgement of the delegated tribunal, the other, the bishop of Pamplona, was permitted to send proxies, as the complex network of papal justice had already implicated him in other business. Next, however, when the representatives of the bishop of Pamplona, who was currently in possession of the disputed objects, were asked by the judge delegate if they wished to enter any separate plea on their behalf (*si ob aliud se legato representassent*), they 'responded that they were claiming from Zaragoza on behalf of the bishop of Pamplona restitution of the fruits which have accrued from the aforesaid churches during the time which they had been despoiled of them.' In turn, the judge responded however that nothing concerning such a restitution had been contained in the papal letter of delegation, whereby the pope had 'committed to him the cognisance of the oft-mentioned controversy,' and that thereby he was unwilling to enter such a plea. As a result, a *Magister* R., on behalf of Pamplona, re-appealed to the 'presence' of the pope. Apparently, therefore, the original papal mandate of delegation had only listed the possession of the churches in question *per se* as the principal object in the suit without any reference to ancillary claims, such as their arrears. This is curious, as most papal mandates of delegation did in fact only vaguely summarise the actions or

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[1] *APRI* 3, no. 94 (JL, 9478), 95 (JL, 9480), 96 (JL, 9479).

[2] Promoted as cardinal-deacon of S. Maria in Via Lata (1158-76); see, A.J. Duggan, '*Servus servorum Dei*,' *Adrian IV, the English Pope (1154-1159): Studies and Texts*, ed. B. Bolton and A.J. Duggan (Ashgate, 2003), 181-202, here at, 183 and n. 10; see also, B. Zenker, *Mitglieder*, 179-80, who misses this identification.

objects of any given suit, seemingly giving delegates, unless otherwise stipulated, broad powers of commission. But this was also the nature of the basic procedure of papal appeal in this period—which could in fact be made at any point in a trial and on any ancillary issue. This in and of itself perhaps contributed to the unusual length and detail of the current mandate of re-delegation. At the same time, it is not clear if the party of Pamplona itself was merely exploiting its appellate right as an evasive tactic.

In any event, the papal letter proceeded to inform the new judges delegate that the cause in question had been duly 'recalled' to the pope, in whose presence the bishop of Zaragoza and the representatives of Pamplona had all duly assembled. There, the same *Magister* R. importunately demanded through his subdeacon restitution of the aforesaid fruits; 'and so that he would more quickly obtain that which he was desiring,' produced a rescript of Celestine II which had been sent to the bishop of Zaragoza ordering that restitution be made to Pamplona concerning the disputed churches. And while the rescript itself, it was noted, contained no specific mention of the restitution of fruits, the *magister* nevertheless 'vehemently leaned upon the word of restitution, firmly asserting that the restitution of the fruits ought to be made to him.' In reply, Zaragoza responded that he ought by no means have been compelled to offer restitution, as neither his predecessors nor he himself had stolen those churches from the bishop of Pamplona. Nor, he added, had he even held those churches for the entire span of time during which Pamplona complained that he himself had been despoiled of them; and even if he had in fact held them for a short duration, they had been recovered not through violence but rather through the mandate of the archbishop of Arles, who was then papal legate. Thus, a *magister* was sent as proxy, who appealed from the delegated court—and thus apparently had been empowered to do so—and himself accompanied the appeal and case to Rome. And though the master only pleaded through the agency of a subdeacon, yet his party attempted to prevaricate, standing upon the semantics of a specific term of its muniments—in other words, a lawyer was arguing through casuistry.

Thereupon, Zaragoza argued further that, although Celestine II had in fact ordered restitution to be made concerning the disputed churches, Pamplona had not been content to wait for the bishop of Zaragoza to restore them but, 'just as it was pleasing to him, he occupied the same churches through the violence of the count of Barcelona.' And thus, because he had not held the principal objects for any length of time, it followed that he could not have been in possession of their fruits, or revenues. In response, the advocate of Pamplona averred that his party had not violently occupied the said objects through the aforesaid count: 'for Lord Celestine himself had ordered the same count with his own writing so that, if Zaragoza would not make restitution, the count himself should restore it to the church of Pamplona.' The present pope, Eugene, in turn then ordered to be shown to the court the alleged rescript of Celestine, which the advocate conveniently demurred he had left at home. The case, accordingly, was exceedingly difficult. The parties stood

all on the evidence of previous papal acts; but such acts were unavailing in procedure without actual documentary support. The pope, therefore, although he was unwilling to defer the matter of the restitution of the fruits—which had formed the basis of the appeal—also 'strove to be delivered over to us any form of evidence which anyone would be able to show on his behalf which concerned the principal objects.' Zaragoza therefore claimed the restoration of the disputed churches with a possessory judgement along with their fruits and the expenses which he had incurred 'on this occasion, because the party opposing him confessed that it was in possession of the same churches, and he himself firmly declared that he had been despoiled through the violence of the count.' Against this claim, 'the advocate of Pamplona resolutely set forth in opposition the mandate which had been sent to the count by Lord Celestine, through which he claimed the aforesaid churches as they had been restored to him.' And as he declared, 'with the heart the author,' that he was in possession of those objects through the legal recourse of this device alone, he denied that he ought to be compelled to restore them.

As a result, the papal court proved unwilling to proceed with regard to the principal objects in the absence of the substantive evidence, as it continued that because the court could not be made certain whether Celestine's mandate had actually been issued, the petition of Zaragoza could neither be quashed nor advanced in the papal presence. But apparently Zaragoza's defence concerning the restitution of the fruits did stand up, as the letter continued: 'For the rest, with the counsel which has been communicated by our brethren, Zaragoza has deserved to obtain absolution from the claim of the fruits, over which it had been litigated a long time in our presence.' For the rest, a mandate of re-delegation followed: 'Therefore, because it is our duty to put lawsuits out of the way as much as we are able according to justice, the oft-mentioned cause, because we have not been able to resolve it conclusively at present, wishing to spare the expenses and labours of both parties, we have arranged to be committed to the cognisance of your prudence.' The pope duly ordered the delegates 'to decide it with a due end, at a fitting place and time, having summoned the parties before your presence and convened as one, having heard and fully understood their evidence and allegations, with appeal having been removed.' A *si non omnes* clause followed: 'Truly, if, God forbid, it should come to pass that, having strictly maintained the inevitable terminus which you will have enacted, one of you should be absent, the two who should remain should hold no less power of judicially examining and settling the cause.'

In sum, in the absence of the critical evidence, the pope in this case was compelled to re-delegate the principal cause to a mixed tribunal, but only after resolving personally the ancillary issue which formed the basis of the second appeal. Furthermore, the case, proceeding thus, had become prohibitively expensive for all parties involved. And the mandate closed by offering a rare glimpse of the curia's sensitivity towards attempts at fraudulent litigation: 'And because as much the judges as either of the parties are often uselessly wearied by the ill-designs of one or the other

parties, we order you with the authority of the present letter so that, if either of the parties without the most manifest and legitimate cause should presume to absent itself at the time of the undertaking of a judgement, it should be deprived of the opportunity of possession, and the party which should faithfully present itself should rejoice at having been brought into possession.' And since the cause itself had already and 'laboriously' tied up the courts for some time, and 'lest through a long contestation one or the other church should be further worn down by labours on account of this,' the pope ordered the new judges to terminate the cause 'with a due end' by the next Christmas 'without any subterfuge tolerated.' A further technical clause was added concerning witnesses which the archbishop of Tarragona had received after the current appeal, stating that 'it appears to us that, if the needs of the cause should demand it, if they should be willing to swear again, they ought not to be withheld as evidence in your judgement just because, as we have said, they were received after the appeal.'[1]

Again, this particular mandate of delegation was singular with regard to its comprehensive recapitulation of the details of the case up to the point of re-delegation—including its overall detail of judicial procedure at the curia—and in the degree and detail of procedural instruction included in the new terms of delegation. Nevertheless, this case, like others, demonstrated the potentially circuitous nature of the processes of delegation, second appeal, and re-delegation. In another interesting case-study, the potentially complex processes of judicial delegation involved a series of letters concerning separate though interrelated causes. To begin with, in October 1150 Eugene III wrote to the bishop of Dijon concerning a grievance on the part of the monastery of Vézélay, implicating also the bishop's brother, the duke of Burgundy, and demonstrating an instance of contingent and partial delegation. The letter ordered the bishop 'to cause those things which have been seized to be restored to the aforementioned brethren by your men in their entirety, and congruous satisfaction to be shown for the damages and injuries sustained.' However, it offered, 'if you firmly believe that you possess any justice against them over the pecuniary cause, you will be able to obtain in the presence of...the bishop of Auxerre...that which will have been just.' The bishop of Dijon was thereby instructed, if he should be summoned by the same bishop of Auxerre, to proceed to his presence and firmly receive and observe whatever the bishop of Auxerre should accordingly adjudicate between himself and the contending party, Vézélay. However, should the parties wish to plead over the *status* itself of the monastery, the pope stipulated that 'we wish that it is handled in our presence.'[2] In this case, Vézélay was one of those houses which pertained 'specially' to St. Peter, resulting probably in this particular, partial form of delegation.

Shortly thereafter in January 1151 the pope delegated a similar case to the archbishop of Sens on account of a complaint by the abbot and brethren of Vézélay, charging the bishop of

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[1] PUS2, no. 68.
[2] *PL*, Eugene III, no. 400; see also, *PL*, Eugene III, no. 401.

Orléans with seizing from them 'against justice,' occupying 'through violence,' and detaining a certain church which the bishop's predecessor had donated to them 'and affirmed with the authority of his own writing.[1] Two weeks later a papal privilege of protection was issued for the bishop of Orléans.[2] A month later Eugene wrote to the abbot and brethren of Vézélay that the bishop of Dijon had personally lodged his own complaint against them in the pope's sight and that of his brothers as well as the abbot's own confrere whom he had dispatched to the curia, pleading that the abbot had been undertaking to seize from him certain things which his church had held peacefully in the monastery of Vézélay continuously up to the present time, and that the abbot himself had responded personally to the bishop that he was only acting wholly in proportion to the bishop's own behaviour—tit for tat, that is. The abbot was thereby ordered to come to the pope's presence by a specified date prepared to respond over the pleas either through himself or through a proxy with the muniments of his monastery, chiefly his house's own 'instrument of foundation,' unless by chance he should reach a concord with the bishop in the meantime. The abbot was further ordered to offer justice in the presence of the bishop of Auxerre 'for those things which you and your men are holding unjustly from his men, since we have in like manner ordered our same brother, the bishop of Orléans, by the same means, to allow justice in the presence of the same on account of those things which his men have seized from your men. Truly, in the meantime, with regard to those things which he possesses, we wish no molestation to be inflicted upon him.'[3]

Eleven months later Eugene wrote to the abbot of Reigny, informing him that he was committing to him a controversy between the abbots of Vézélay and Chora over the tithes and parochial rights of a certain *villa* as well as certain money which the abbot of Chora was said to have received from certain burghers of Vézélay as a loan.[4] The following day, the pope sent to the bishop of Langres and the abbots of Reigny and Tournus informing them that the cause which was being pleaded between the bishop of Dijon and the abbot of Vézélay could not be terminated at the curia 'with a judgement,' as the bishop was claiming to have certain witnesses too old to complete the journey to 'Rome.' Thus, a series of distinct causes concerning certain common *auctores* was being processed at length by the curia through a complicated procedure and greater global network, compensating for, through a seemingly improvisational procedure, potential shortcomings inherent in a central system of justice which operated otherwise from a inhibitive distance. The current mandate thereby instructed the judges to convene at a place suitable for the witnesses in question, and, 'having received oaths from them, faithfully collect in written terms

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[1] *PL*, Eugene III, no. 422; see also, *PL*, Eugene III, no. 423.
[2] *PL*, Eugene III, no. 424.
[3] *PL*, Eugene III, no. 425 (JL, 9449, for the date).
[4] *PL*, Eugene III, no. 485; see also, *PL*, Eugene III, no. 486.

whatever they will have testified to over the cause itself.' At that point, it was stipulated, when the bishop of Dijon 'should be ready to return to the cause,' the delegates should transmit to his presence those things 'redacted in writing and stamped with the impression of your seals.' Again, the detailed technical instructions of procedure in this case were not typical as a rule, including stipulations that the delegates 'faithfully' redact all testimony; and especially that a particular and verbatim form of oath was to employed: 'Truly, this will be the form of the oath: "I swear that I will disclose to you however much of the truth I know concerning the cause which is being pleaded between [the bishop of Dijon and the abbot of Vézélay]. I myself will fully refrain from falsehoods."'[1]

On the surface, the procedure in this series of cases appears to have been inefficient and tortuous; and in a sense it was. For the curia's part, the concern was first and foremost for fairness, or *aequitas*, for especially *iustitia*; but also for its own *primatus*; and in this sense the inevitable circuitry of procedure was tolerated. Yet, at the same time, as the terms of the case discussed above between the bishops of Pamplona and Zaragoza demonstrated, the curia would impose a limit to that tolerance, as that case was re-delegated without further appeal, and with stipulations of penalties and forfeiture should either party further impede a final settlement or resolution. On the whole, each of these cases demonstrated the potentially *ad hoc* yet juridically sound—especially in the demand for documentary proof as well as witness testimony as evidence—nature of procedure in this period, given the technological and communicative constraints. Again, the imperative was first and last the gratification of justice, and the means and tools to attain as much were elastic and, in the end, relatively sophisticated. For most of the cases of delegation that have come down to us, however, the process appeared rather more simple, without evidence of re-appeal or other complications. Still, one might criticise the curia in any case for needlessly appropriating provincial business at the cost of a greater efficiency, for the sake merely of justifying its own primacy and prestige. This would disregard, especially, cases between fellow bishops. In these cases the pope was a necessary intermediary: his office, his authority, and his tribunal were all exalted, and this served immeasurably the contentious interests of the prelature—the canonical proscriptions against bishops judging other bishops notwithstanding. Thus, while the existing canon law failed to define satisfactorily the rights of primates and metropolitans, especially with regard to judicial jurisdiction, these same primates and metropolitans themselves were just as often parties to causes, while nonetheless contending bishops in cases scarcely always shared the same metropolitan, or even primate. All bishops in this period, however, acknowledged the ultimate primacy of Rome.

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[1] *PL*, Eugene III, no. 487.

5.3 MOTIVES BEHIND THE SYSTEM OF JUDGES DELEGATE

Though the system of case delegation was almost certainly utilised on a considerable scale in this period as a method of alleviating a papal workload which might have been beginning to overstrain the system, there were also apparently other, though largely interrelated, considerations which contributed to the seemingly quite sudden quickening of the practice after the death of Innocent II. In particular, delegation was used as an expedient with regard to the various technical and procedural requirements of the papal judicial system. This was particularly important on account of the curia's relative ignorance of local affairs, including potential inaccessibility to evidence, as well as its lack of powers of enforcement or execution in the provinces. Broadly, the system of case delegation provided a logistical advantage, both in terms of costs and the inconvenience of travel and transmission of evidence or information, to the parties involved in a given case. Scholars, in fact, have generally assumed that the earliest instances of case delegation were merely a result of such considerations, and not a means of mitigating and sharing some of the papal workload and its accumulating pressure. J. Sayers noted that the greatest advantage of the judge delegate system even by the thirteenth century was that evidence from the locality could be easily collected and used. She observed on the basis of episcopal records for the province of southern England for the first half of the thirteenth century that inquisitions and the enforcement of courts' decisions were delegated downward through the diocesan hierarchy, down to rural deans who acted as investigators and officers for the ordinaries.[1] Furthermore, while as early as 1141 the institution of judges delegate seems to have been sufficiently developed for a prelate to be granted an indult of exemption from the duty,[2] most of the early indults only followed the busy pontificate of Alexander III.[3] None in fact exist from the period 1143-53. According to this theory, therefore, as reflected through the unusually plentiful documentation which has survived for the English Church, massive or burdensome delegation only began in earnest in the 1160s and 1170s, as the expansion of business which begins to be apparent in the evidence for the episcopate of Hilary of Chichester (1147-69), who was judge delegate in fifteen cases, culminated under Bishops Bartholomew of Exeter (1161-84) and Roger of Worcester (1164-79), who each judged between

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[1] See, J. Sayers, *Judges Delegate*, 9, 113, 154.

[2] See, *Der Bericht des Abtes Hariulf von Oudenburg*, 112. Cf., Bernard of Clairvaux, *Letters*, no. 48 (B.S. James, no. 51), ca. 1130, in which Bernard seems to have insinuated to the chancellor Cardinal Haimeric that he would be much obliged if he could obtain a privilege through his good offices absolving him from the duty of sitting as a papal judge in the provinces.

[3] See, J. Sayers, *Judges Delegate*, 143-46; M.G. Cheney, *Avranches*, 179-80; C.R. Cheney, *Becket*, 67-69; C.R. Cheney, *Innocent III and England*, 117-18; I.S. Robinson, *Papacy*, 192-93.

sixty and seventy cases.[1]

In fact, for the period 1143-53 the papal letters of delegation offered little direct insight into the precise motives behind delegation in specific cases. In July 1144 Lucius II wrote to the bishop of Lucca and an unidentified cardinal-deacon G. that the prior of S. Angelo in Faro, coming to his presence, had 'defended himself with mere (*nuda*) words that he had inflicted no injury upon our brothers of S. Frediano over the church of S. Salvatore.' However, the pope allowed, 'since we, hindered by much and various business, are not able to apply attentive diligence with regard to the cause itself,' he ordered the bishop and cardinals to carry out the excommunication and punishment of all guilty parties.[2] While this case did not involve the actual delegation of litigation—the delegates were not judges delegate *per se*—the admission of administrative strain on the curia, a problem potentially exacerbated by recalcitrant or evasive parties, was made clear. Such explicit admissions of overstrain, however, were rare. Otherwise, a few letters pointed to more immediate factors as motives for specific instances of delegation; and In these cases, by and large, it appears to have been the curia's underlying concern for procedural 'fairness' that prompted delegation. To begin with, there is evidence that the pope was delegating out of a concern to defray or halt the expenses incurred in litigating at the curia.[3] Thus, in June 1153 Eugene III re-delegated to the bishops of Nîmes and Viviers a cause between the bishop of Uzès and the prior of Gourdon: 'wishing to spare with paternal kindness the further expenses and labours of both parties.'[4]

In the case discussed above between the bishop of Dijon and the abbot of Vézélay, indication was given that the concern for 'fairness' centred upon the inability of the parties to present evidence, in this case, aged witnesses, as a partial motive for delegation. Similarly, between 1150 and 1153 Eugene wrote to the archbishop of Canterbury that the abbot of Crowland,

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[1] See, H. Mayr-Harting, 'Hilary, Bishop of Chichester (1147-69) and Henry II,' *English Historical Review* 78 (1963), 209-24, here at, 211 and n. 5; A. Morey, *Bartholomew of Exeter*, 44-78; M.G. Cheney, *Alexander III*, 226; M.G. Cheney, *Avranches*, 180-81; I.S. Robinson, *Papacy*, 194; C.N.L. Brooke and A. Morey, *Foliot and Letters*, 243; J. Sayers, *Judges Delegate*, 7-11; K.W. Nörr, *Jurisprudence*, 331-32. M.G. Cheney wrote that 'the number of documents which survive to show Robert of Bethune [bishop of Hereford, 1131-48] acting as judge-delegate is small when compared with those relating to cases heard by the famous bishops of the next thirty years...This striking increase in the number of cases gives at first sight the impression that at some point after the death of Robert of Bethune there was a great increase in the number both of appeals and of delegations.' M.G. Cheney, *Avranches*, 180-81.

[2] *PL*, Lucius II, no. 61; also, *IP* 3, *411/7. The same order was repeated two years later to the bishop of Lucca under Eugene III because 'the clamour has been brought to our ears that the prior of S. Angelo and his brethren are neglecting to observe that which...Pope Lucius [II] ordered with regard to the church of S. Salvatore.' *PL*, Eugene III, no. 35.

[3] For instance, in the case detailed above between the bishops of Pamplona and Zaragoza, Eugene informed the judges that he was delegating the case partly 'wishing to spare the expenses and labours of both parties.' PUS2, no. 68.

[4] *EPRI*, no. 213 (JL, 9733).

in his case against a subdeacon over a certain church, appealed the same subdeacon to the papal audience from the court of the bishop of Lincoln because 'the aforesaid abbot clearly saw himself to be aggrieved in the same cause.' The cause itself was duly pleaded, with both parties present, in the papal presence at the Lateran Palace; 'but since concerning the cause itself we have been unable to possess a full knowledge, because they have not by any means been able to furnish either witnesses or instruments which would produce confidence in us, we are directing both parties to be returned to your presence.' The archbishop was thereby ordered to hear and terminate the cause 'without the remedy of appeal,' with the further instruction that 'if the truth should be ascertained that the same [subdeacon] stole the tithe of the churches...after an appeal made to us by the aforesaid abbot, cause it to be restored in its entirety to the same abbot.'[1]

In other instances, the primary factor behind delegation appears to have been the pope's refusal to act definitively in the absence of one of the contending parties. Thus, in October 1149 Eugene delegated a case to Abbot Suger of St. Denis noting that, 'because the opposing party was not present, we could not proceed in their cause and definitively settle anything with equity saved.'[2] In similar cases, the potential of litigants crossing paths in the course of the long and toilsome trek to Rome or its environs, and the concomitant necessity of proceeding on the basis of *ex parte* statements, had apparently stalled the possibility of proceeding fairly. Thus, In November 1148 Eugene delegated to the bishops of Auxerre, Soissons, and Abbot Suger a cause of the archdeacon of Arras because he 'had come to our presence and explained to us and our brothers that which has been done concerning our son, *Magister* H., quite differently as it had been announced by Adam and his associates, canons of the church itself.' Accordingly, the pope ordered the delegates 'to hear more diligently, having summoned both parties to your presence, the accusations on both sides.'[3] And in 1149 the pope committed to Abbot Suger another case between one Peter, 'the bearer of the present letter,' and a canon of Meaux, Joscelin: 'Both have presented themselves to our sight; in truth, first Joscelin said that injury and violence have been inflicted upon him by the forenamed Peter, and on account of this he appealed to our audience. Truly, after Joscelin's departure from us, the same Peter, coming to us, denied entirely that which had been said concerning him. Therefore, because we were not able to ascertain to the fullest the truth of the matter over this, we have arranged for the cause itself to be remitted to your discretion.'[4]

In June 1152 the pope committed to the bishop of Hereford a longstanding case between

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[1] PUE3, no. 90.
[2] *PL*, Eugene III, no. 366.
[3] *PL*, Eugene III, no. 329 (JL, 9306, for the date).
[4] *PL*, Eugene III, no. 374. See similarly, e.g., *PL*, Lucius II, no. 56; *PL*, Eugene III, no. 395; PUE3, no. 47.

the monks of Ely and a certain Henry. According to the papal letter of delegation, after the restitution of a certain *villa* had been made for the aforesaid Henry in the presence of the archbishop of Canterbury, papal archbishop legate, and the bishop of Chichester, the monks of Ely appealed the same Henry to the papal presence on the charge of the falsification of papal letters. At length, both parties had come before the papal presence; but since the monks had been unable for unspecified reasons to proceed in their indictment of Henry, Henry counter-sued, lodging a complaint against the monks that after undertaking the journey to the curia he had been despoiled of his property in the same *villa* through the monks' own men. Accordingly, the pope had remitted the cause to the archbishop of Canterbury 'to be judicially examined.' At that trial, 'although the cause of the restitution was being discussed and Henry had been prepared to prove the spoliation made against him through the men of the monks,' the monks, claiming some grievance, had re-appealed the case to the pope. After both parties again had travelled to the curia, but 'because both parties had come unprepared,' the letter reported, 'the cause itself has not been able to obtain a due end in our presence.' The cause was thus re-delegated, now to the bishop of Hereford, with specific instructions and terms of contingent delegation: whatever the same Henry 'should be able to prove legitimately to have been stolen from him by the men of the same monks or by others through their suggestion after the restitution was made of the aforesaid *villa*,' should be restored to him entirely. With that done, 'if the monks of Ely should wish to bring an action concerning the cause of the proprietorship,' the delegate was instructed to hear that cause and settle it through the appropriate legal processes.[1]

In this case, it is difficult to conjecture to what extent the monks had re-appealed in good faith. Indeed, evasive appeals as with other forms of dishonest litigation were already beginning to afflict the papal court, so much so that the entire papal appellate system was condemned outright by Bernard of Clairvaux for granting free reign to such chicanery, which potentially could hold a case up interminably, with evasive litigants or defendants re-appealing on frivolous grounds, hoping perhaps to wear down an adversary through mere attrition. In this sense, the papal appellate system could be manipulated by exploiting its requirements for procedural 'fairness.' And in certain cases the pope appears to have delegated out of impatience or exasperation: in ca. 1145-49 Eugene delegated to the archbishop of Bordeaux a cause of the monastery of St. Cyprien 'since we do not wish that its brethren sustain any loss of their rights through crafty delays.'[2] Nevertheless, parties could still re-appeal after delegation and, as has been shown above, simply come to curia 'unprepared,' prompting re-delegation and thus further protracting a cause. In this regard, delegation exacerbated evasive litigation. Yet, in the end, circuitously if not paradoxically,

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[1] PUE2, no. 71 (JL, 9591); see, PUE2, no. 64 (JL, 9433), for the prologue.
[2] Archives historiques du Poitou 3, 20, no. 14 (JL, 9314); see also, Archives historiques du Poitou 3, 20, no. 15 (JL, 9315).

local judges would almost always have proved better placed and equipped to see past or thwart various deceptive stratagems. Strangely, even, in the above letter to the bishop of Hereford, a case involving an accusation concerning a forged papal document had simply been delegated by the pope outright to the archbishop of Canterbury. The problem remained, nonetheless, as to whether judges delegate possessed the juridical authority and devices to prevent stratagems in the face of the unassailable right of appeal; while the type of circuity which this created was the basis of much of the criticism of the papal judiciary system in the second half of the twelfth century. The problem was progressively taken up by the popes in the course of the twelfth century, and resulted already by ca. 1145-50 in attempts to curb further access to appeal in mandates of delegation—cases were occasionally simply delegated 'without further appeal.'

At the same time, all of these things only contributed to overstrain the papal system. Indeed, in all cases of delegation overstrain from the amount of business being brought to the curia was almost certainly an underlying factor. Accordingly, what has been generally overlooked by scholars is the fact that most of the immediate factors which prompted delegation would only have become an acute enough concern in more and more delegated causes as more and more parties as well as subsidiaries to causes became implicated in an increasingly greater number of causes. In other words, the curia would have been less willing to wait for the growing number of parties and their witnesses to travel, nor to tax the same with the burdens of travel, as it had increasingly less time and resources to devote to any particular cause. As early as 1141, for instance, it is known that Abbot Hariulf of Oudenbourg was only able to arrange a hearing for his case for the ninth day after his arrival at Rome[1]—similar evidence exists from the period 1143-54.[2] In this sense, what has not been stressed by any scholar was the frequent incidence of delegation to prelates in central and northern Italy: at least sixty-one papal letters concerning judges delegate concerned twenty-nine different Italian judges; as compared to 106 letters concerning thirty-seven different sees or houses in what is today France.[3] On this basis it is difficult to conclude that the system of judges delegate was predicated solely upon the constraints of geography and the logistical limitations inherent in medieval routes of communication. In other words, the institution of judges delegate was probably not purely an expedient dictated by the circumstances of propinquity or the great distance separating the curia or legates. On the other hand, statistically, it cannot be avoided that out of no less than 142 letters demonstrating the employment of the system of judges delegate, only six have been definitely dated to that eighteen month period of the curia's French sojourn (1147-8 July 1148), when the curia resided beyond the Alps and thus in a considerably more

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[1] *Der Bericht des Abtes Hariulf von Oudenburg*, 101-04, here at 103-04; see also, I.S. Robinson, *Papacy*, 189-91.

[2] See, e.g., *PL*, Eugene III, no. 201, 465, 514; PUF6, no. 61.

[3] See, Appendix 4.

accessible position for all transalpine supplicants: only one letter for every three months of that sojourn; or, one-third per month, compared to nearly one and a half per month for the rest of the period—four times as many. This was a unique situation, however, and would not have reflected how or why the system operated under 'normal' circumstances—i.e., when the curia resided in Italy.

In sum, the employment of a system of delegating litigation in the period 1143-53 must have been sped by a variety of immediate co-factors predicated upon a concern for procedural fairness, including curial ignorance and other limitations, a concern to militate against evasive appeals and other forms of dishonest litigation, and similarly a concern to reduce the costs of litigants caught up in the potentially endless cycle of appeal and re-appeal. But ultimately, all of these factors were all almost certainly related to if not dependent upon the primary factor of overstrain at the curia. On the other hand, it is difficult to conclude, as J. Sayers did for a later period, that delegation occurred 'as much in answer to the external demand for centralisation and strong government' as it was 'the result and expression of a conscious policy, formulated by popes, canonists, and administrators, to enhance the prestige and power of the Roman see.'[1] Rather, the fully functioning system of judicial delegation ca. 1150 is perhaps best perceived as the crowning phenomenon in the reconciliation of the curia—simultaneously conscious of both its primacy and the limitations of its systems of justice—and the episcopate: if historians could speak of a 'synchronism' between monastic and papal reform in the Gregorian period, for the mid-twelfth century one could just as easily speak of a synchronism between the papal curia and the secular prelacy in what was the predominant activity of the curia in that period, the administration of justice.

As C.N.L. Brooke and A. Morey aptly noted, the twelfth-century English prelate Gilbert of Foliot, that 'jurist turned monk'—abbot of Gloucester (1139-48), bishop of Hereford (1148-63), and bishop of London (1163-87)—'belonged precisely to that generation of bishops whose work was most crucial for the growth of papal jurisdiction. In the generation before he became bishop, appeals were rare and delegation rarer; at the time of his death they were becoming so common that lesser dignitaries came more and more commonly to fill the role of judge delegate which bishops had performed at the height of his career. Gilbert was one of a group of active and energetic bishops who played a leading part in making this transition possible.'[2] But the seemingly incongruous dialogue between papal primacy and reliance upon the episcopate was representative of the need, in the mid-twelfth century, to balance both symbolic and practical elements of a Church-wide constitution increasingly centred upon a central office at 'Rome.' At best, as with so much of 'policy' in this period generally, one might conclude that, procedurally and

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[1] J. Sayers, *Judges Delegate*, 40-41.
[2] C.N.L. Brooke and A. Morey, *Foliot and Letters*, 244.

administratively, the curia was proceeding *ad hoc*, accommodating the growing torrents of petitioners inundating that office with its various business by daily integrating the provincial prelature into the administration of that same business, maintaining all of the while the practical basis of its primacy, which was appeal to its justice and protection.

6 *PAPAL JUSTICE: DISADVANTAGES AND DEFECTS*

Criticism of the overall effectiveness and value of the systems of papal justice—what J.C. Moore broke down into twin categories of 'efficiency' and 'fairness'—has emanated, at times vociferously, from twelfth and especially thirteenth-century contemporaries and modern scholars alike. For the more immediate period under discussion here, Bernard of Clairvaux's invective against the value of these systems is celebrated.[1] John of Salisbury was also somewhat critical, though he, like Gerhoh of Reichersberg, reserved most of his censure for what he regarded as the corrupt practices of papal legates. Otherwise, we have to look to later medieval critics, such as the chief Justiciar to the English crown, Ranulf de Glanville, who boasted to Walter Map ca. 1190 that the king's judges 'certainly decide cases much more quickly here than do your bishops in the Church courts.' Walter responded merely that 'it is true, but if our king were as far removed from you as the pope is from the bishops I think you would be equally slow.' Ranulf merely 'laughed and did not deny it.'[2] According to J.C. Moore, Innocent III's own letters on appeals and judges delegate, as well as the canons of the Fourth Lateran Council, suggested that 'the confusion created by the system [of papal justice] was generally recognised. And it continued.'[3] Thus, in the late thirteenth century, the prior of Durham, Richard Claxton, wrote to a correspondent in Rome that 'causes in the Roman curia are like things immortal and only with difficulty obtain any effect.'[4] Around the same time, the Franciscan archbishop of Canterbury, John Pecham, included among the main 'seven evils' afflicting the Church of his time—which he thought must have constituted the 'seven phials' of the Apocalypse—the evils of appeals to Rome, clerical litigation,

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[1] Beyond the *De consideratione*, see also, Bernard of Clairvaux, *Letters*, no. 48 (B.S. James, no. 51), ca. 1130, in which Bernard told the chancellor Cardinal Haimeric (1123-41), *inter alia*, that, 'I do not think that because I am hidden away and keeping silent the troubles of the Church will cease so long as the Roman curia continues to pass judgements to the prejudice of the absent in order to please those who are at hand;' see also, J.C. Moore, 'Papal Justice in France around the Time of Pope Innocent III,' *Church History* 41 (1972), 295-306, here at, 300.

[2] Walter Map, *De nugis curialium*, ed. M.R. James (*Anecdota Oxoniensia*: Medieval and Modern Series 14: Oxford, 1989), D. 5. VII. 253, see, xxvi-xxvii, for the date; also, D.M. Stenton, *English Society in the Early Middle Ages (1066-1307)* (Harmondsworth, 1952), 39; see also, J.C. Moore, *Innocent III*, 300.

[3] J.C. Moore, *Innocent III*, 300, citing Innocent's forty-four decretal entries on these subjects in the *Decretales* of Gregory IX (1234) (*Decretales*, Gregory IX, Bk. 1. XXIX. 22-36, Bk. 2. XXVIII. 43-61), as well as the conciliar canons (Ecumenical Councils 1, 230-71 [Mansi 22, 979-1068], Fourth Lateran Council, cc. 35 [here at, 251], 36 [here at, 251], 37 [here at, 251-52], 38 [here at, 252], 47 [here at, 255-56], 48 [here at, 256-57]); see also, J.C. Moore, 'Count Baldwin IX of Flanders, Philip Augustus, and the Papal Power,' *Speculum* 37 (1962), 79-89.

[4] *...et vix effectum aliquem sortiantur.* From the unpublished 'Archives of the Dean and Chapter of Durham:' the Latin text and context was provided by R. Brentano, *York*, 163; see also, J.C. Moore, *Innocent III*, 300-01.

the daily limitation of the powers of prelates, and the worldliness of priests:[1] the subterfuge of appeal and clerical competition had undermined the pastor and reformer's ability to correct clergy and people.[2]

In fact, in the course of the second half of the twelfth century the strain on the papal judicial system would become a real and distinct effect. When a serious error occurred in one of his rescripts, Alexander III wrote to the archbishop of Canterbury that 'we do not believe that we wrote so positively, and if we did so it arose from our being overworked.'[3] In September 1184 or 1185 Lucius III acknowledged: 'Since on account of the multitude of the various business which is referred to the apostolic see the terms of our writings and other things which we do can not be retained by memory, we may sometimes be deceived by the craft of certain men and unwittingly led to contradict those which we previously wrote.'[4] Soon after, Gregory VIII complained that he was so oppressed by the volume of day to day business that it was beyond his strength to deal efficiently with it—focussing his complaint not so much on dishonest litigation or appeals *per se*, but the mass of trivial cases which took him away from important business.[5] Clement III in turn admitted in a general constitution of 9 March 1189 that, 'because we cannot keep everything in mind, cases formerly committed to certain judges are committed straightaway on the petition of other persons to other judges; and so commission is frustrated by commission and the Roman curia incurs the charge of levity.'[6] There is further evidence that by the end of the twelfth century the duty to serve as a judge delegate was becoming a millstone for many of those judges in the provinces, so that some sought and paid for papal indults absolving them from the duty, which, it has been thought, interfered with the judge's normal duties and cost him a loss of time.[7] But

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[1] John Pecham, *Registrum epistolarum*, ed. C.T. Martin (*Rerum Britannicarum medii aevi scriptores* 77: London, 1882-), 694-97; also, J.R.H. Moorman, *Church Life in England in the Thirteenth Century* (Cambridge, 1955), 215-16, 236; see also, J. Sayers, *Judges Delegate*, 277; J.C. Moore, *Innocent III*, 301.

[2] See, J.R.H. Moorman, *Church Life*, 236.

[3] *Decretales*, Gregory IX, Bk. 1. III. 2 (JL, 14,317); see also, C.R. Cheney, *Becket*, 65; I.S. Robinson, *Papacy*, 198; G. Barraclough, *Papacy*, 106.

[4] From a presumably unprinted thirteenth-century cartulary of St. Geneviève: Paris, Bibliothèque Saint-Geneviève, ms. 356, 87, quoted by M. Bloch, 'From the Royal Court to the Court of Rome: The Suit of the Serfs of Rosny-Sous-Bois,' *Change in Medieval Society*, trans. S. Thrupp (New York, 1964), 3-13, here at, 4 and n. 10, who provided the Latin text; Bloch also provided the date, which, he added, could have been either 1184 or 1185, though almost certainly 1185; the letter did not appear in JL, however, under any of those dates; see also, J.C. Moore, *Innocent III*, 300.

[5] *PL*, Gregory VIII, no. 15, col. 1552-53 (JL, 16,056); see also, *Die Dekretalen Gregors VIII.*, 114; I.S. Robinson, *Papacy*, 197; C.R. Cheney, *Becket*, 70-71.

[6] *Die Dekretalen Gregors VIII.*, 122-23, translation by, C.R. Cheney, *Becket*, 65-66; see also, S. Chodorow, *Dishonest Litigation*, 190-91; I.S. Robinson, *Papacy*, 197.

[7] J. Sayers, *Judges Delegate*, 134-46; C.R. Cheney, *Becket*, 67; I.S. Robinson, *Papacy*, 193. J. Sayers added that the advantages of serving as a judge delegate 'were also enormous,' as it was customary for a judge to exact a tenth of the suit. She also added that requests for indults were also probably very much the exception to the rule. J. Sayers, *Judges Delegate*, 135, 144. I.S. Robinson, *Papacy*, 193, noted that by the end of the twelfth century such indults 'were evidently much sought after by bishops and abbots groaning under the demands of this time-consuming and expensive duty.'

perhaps the most severe criticism of the papal systems of justice would, by the same time, centre upon a perceived rampant corruption or venality associated with most of their aspects. As I.S. Robinson wrote: 'Critics of papal justice considered that the venality of papal officials, like the prevalence of fraudulent appeals, was an inevitable concomitant of the system. Rather than suffer any diminution of her judicial supremacy, the Roman Church was prepared to live with corruption and fraud. That the popes were aware of such criticism and had their own misgivings on the subject is clear enough from the reforms decreed by Alexander III, Gregory VIII and Clement III.'[1]

As suggested, in a pair of articles J.C. Moore roundly decried both the 'efficiency' and 'fairness' of papal justice ca. 1200 over against other available systems of justice open to potential litigants.[2] Using documentary evidence from the domain of the French king only, Moore concluded that the papal curia was ignorant, easily manipulated or duped, and regularly exploited by parties so as to achieve unjust decisions or avoid unfavourable outcomes through delays and all forms of chicanery: cases dragged on endlessly; and papal appeal was merely an open door to evasion—with appeal, in any case, succeeding appeal. Moreover, papal justice was inferior: local or independent tribunals, especially the systems of arbitration and mediation, offered superior alternatives, at least in France. Furthermore, he maintained, many causes that went to Rome and were delegated back to the provinces were ultimately settled by independent arbitration, only after the long and tortuous process of appeal and re-appeal. Finally, he blamed the pope and curia squarely for the faults and failures of the system, while extenuating the responsibility of dishonest litigants, lawyers, or judges. Simply put, Moore declared, 'the system did not work well.' And it 'was perfectly clear that all manner of false stories were being sent out in papal letters, stories that would be subsequently converted with rival ones, perhaps equally false, and again, enshrined in papal bulls.' In this way, 'cases wandered back and forth between Rome and the outlying localities, year after year.' And even if the curia could not have been expected to appreciate the effect which its 'policies' would have had on the authority of bishops and metropolitans, and even if they could not have inevitably accepted what he characterised as the 'inherent weakness of a judicial system having only spiritual sanctions for enforcement,' nevertheless, he asserted, 'the mindless way in which appeals were accepted and delegated is indefensible.'[3]

According to this thesis, furthermore, rather than strengthening the local ordinary the system of appeals and delegates contained another greater and inherent liability, in that it did, in fact, weaken the authority of bishops and episcopal courts. Whereas the rise and development of the system of judges delegate has been seen as a system of papal decentralisation, in reality, Moore averred, beyond the fact that the system exacted a good deal of 'futile effort' from the judges, all

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[1] I.S. Robinson, *Papacy*, 199.
[2] J.C. Moore, *Baldwin*, 79-89; J.C. Moore, *Innocent III*, 295-306.
[3] J.C. Moore, *Innocent III*, 305-06.

papal cases merely removed cases from the courts of local authorities who had better access to information and better means of enforcement. Thus, in any case at Rome or before a judge delegate, the one lacked accurate information and the other the authority to achieve a final resolution. In practice, the result was 'endless litigation,' 'fruitless expense,' and 'wasted effort,' undermining the Church and episcopal courts even more insidiously by facilitating the expansion of secular authority at the expense of the ecclesiastical.[1] To be sure, Moore's uncritical and under-supported appraisal notwithstanding, the systems of papal justice, well before the thirteenth century, presented certain definite defects or problems. But whether the problems were as real and pernicious as Moore's assessment maintained, whether they were inherent in, created by, or exclusive to the systems emanating from Rome, whose own 'policies' were thus squarely to blame, or whether they represented merely the feet of clay of an otherwise solid if not superior structure, remains to be seen.

6.2 CORRUPTION

The toil of the journey to and from the curia was an obvious drawback of papal justice. From England, it has been reckoned, ordinary traffic took seven or more weeks over the course of the journey. At best one might reach Rome from Canterbury within a month: thus, an exchange of letters between England and Rome would take, given the most favourable circumstances, two months, and more often four. At the same time, the inevitable delay in the transmission of orders made some meaningless by the time they reached their destination. Furthermore, beyond the inherent hardship of travel, the journey invariably involved danger, including risks of brigandage—the perils were greater if the pope had powerful enemies in the lands traversed, especially if the territory was under the control of an antipope. Furthermore, once an appellant left his home he ran the risks there of violence, intrusion, and intimidation to his properties and his own. And if he gained the curia safely, he nonetheless, in the warmer months anyway, had to contend with the notoriously insalubrious, potentially lethal, natural elements of the Eternal City and its district—the popes themselves retired to the hills during the summer.[2]

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[1] J.C. Moore, *Innocent III*, 304-06; see also, C.R. Cheney, *Becket*, 72-73.

[2] See, C.R. Cheney, *Becket*, 62-63; C.R. Cheney, *Innocent III and England*, 118; R.L. Poole, *Studies in Chronology and History* (Oxford, 1934), 263-64; F.W. Maitland, *Canon Law*, 113. C.R. Cheney noted that in a certain case the clerks of the bishop of Worcester were so frightened by the insalubrious conditions of Rome that they did not pursue their case 'vigorously.' C.R. Cheney, *Innocent III and England*, 109 n. 44. For the period 1143-53, see, e.g., *PL*, Eugene III, no. 354 (Otto of Freising, *Gesta*, 106-08; JL, 9344), where the papal envoys sent to Conrad III in Lombardy were reported to have turned back from Tuscany on account of the 'summer heat.' For a famous example, Frederick I's army would be devastated by malaria after his siege of Rome in autumn 1167; on this, see, John of Salisbury, *The Letters of John of Salisbury* 2, ed. W.J. Millor and C.N.L. Brooke (Oxford, 1979), 370-79, no. 219, 378-79, no. 220, 388-95, no. 225, 394-97, no. 226, 396-401, no. 227, 426-33, no. 234, 510-11, no. 253; Romuald of Salerno, *Chronicon*, 256; *Annales*

The journey itself to the curia, furthermore, would have obviously entailed a considerable monetary outlay. But the real costs, it has been thought, commenced once one began to prosecute his cause. Beyond outright venality and the considerable expense one could incur simply subsisting while tarrying around the curia—and one could be kept waiting for considerable stints,[1] although, presumably, the greater the liberality, the greater the potential for expedition of one's cause—everything cost money: the supplicant or litigant paid for pen, paper, writing, engrossing, embossing, copying and registration, and perhaps also for the actual process of impetration or petition and other processes along the way. In sum, everyone involved in the various steps of processing business conducted at the curia expected some remuneration for their labour and services, including, it has been thought, access fees to doorkeepers. Litigants presumably in this early period also paid the expenses of their witnesses, and might have chosen to hire advocates and proctors—or keep them on retainer. And once a case was delegated back to the provinces, the judges delegate presumably did not leave without some compensation. Visitations of prelates also, including consecration by the pope and the procurement of the *pallium*, presumably, entailed a fee. But these were all more or less ambiguous 'fees,' and they were more easily rationalised, although it would continue to be debated by the canonists and theologians throughout the twelfth century just how much these sorts of costs could be exonerated from charges of venality or bribery. Even by Alexander III's time, according to C.R. Cheney, there was no trace of 'fixed sums' assessed on various charges and services; and 'because fees were not fixed, the door lay wide open to bribery and corruption.'[2] More dubious, however, were the 'gifts,' or *munera*, that were made to principal or influential members of the curia by those pursuing causes or litigating there. As J.T. Noonan observed, in his massive work on the history of bribes, the voluntariness of gifts in the twelfth century was itself ambiguous, as gifts 'that were expected, gifts for whose non-delivery the pope would make himself difficult, were not wholly voluntary.'[3]

The curia itself perhaps was more susceptible to suspicion and temptation in the second half of the twelfth century as periods of schism and exile, especially associated with the communal revolution in Rome and subsequently war with the emperor, compromised other traditional curial revenue streams. The cardinals lived expensively, and owned castellated fortresses in the City which, like its churches, had been plundered in the battles of the revolution. At length, the

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Ceccanenses, 285-86; *Boso's Life of Alexander III*, trans. G.M. Ellis (Totowa, N.J., 1973), 73-74; *Annales Casinenses*, 312; *Annals of Roger of Hoveden* 1, 293; *Chronica regia Coloniensis*, ed. G. Waitz (*MGH SS rerum Germanicarum in usum scholarum separatim editi* 18: Hannover, 1978), 117-19; *Annales Pisani*, 44; Otto and Acerbus Morena, *Das Geschichtswerk des Otto Morena und seiner Fortsetzer über die Taten Friedrichs I. in der Lombardei*, ed. F. Guterbock (*MGH SS rerum Germanicarum*, n.s. 7: Berlin, 1930), 205-09; *Constitutiones*, 324-24, no. 229; F. Gregorovius, *History of Rome* 4/2, 587-89.

[1] See, *Der Bericht des Abtes Hariulf von Oudenburg*, 103-04; PUS2, no. 46.

[2] C.R. Cheney, *Becket*, 66-67.

[3] J.T. Noonan, *Bribes*, 203.

revenues of the local churches along with papal *regalia* inside and outside of the City were appropriated. St. Peter's was fortified with engines of war; and even pilgrims, both in the City and in the neighbourhood of the City, were plundered. According to Otto of Freising, those who refused the Romans' extortions were even killed, certain 'in the very portico and vestibule of the temple.'[1] In the provinces outside of central Italy, meanwhile, appellants from everywhere continued to flow to the curia. Thus, while the local and traditional revenues were being halted or diverted, the expenses of the system, and the curia, only continued to mount: the ever-growing 'army' of papal officials, Cheney noted, 'growing in response to the demand for more government and more professionalised government,' could only thus be maintained in large measure on petitioners and litigants' fees and presents; and as a result 'pungent satirists and angry moralists complained throughout the century of the need to pay all and sundry if you went to Rome.'[2] Whether there were comparative charges and venality at the episcopal courts or courts of other judges delegate remains uncertain, yet it does not appear that the judge delegate in the early period had any official means of recouping the expenses which his commission cost him—presumably it was a charge on the judge's own ecclesiastical revenues.[3] At the same time, the papacy in this period was only beginning to experiment with alternative forms of financing and 'taxation.' Thus, despite the sustained efforts of the curia to spur popular collections for the Templars,[4] this was conducted solely for the benefit of that order: as yet, there were no 'policies' approaching a 'crusade tax.' More importantly, the curia was only occasionally granting any kind of indulgence.

In fact, only a few papal letters of the period 1143-53 provided benefits for pilgrimage sites and their donors.[5] On most occasions such indulgences were granted in combination with the papal consecration of the altars of a few central and northern Italian churches.[6] In this way, in June 1147 Eugene III, residing in the neighbourhood of Paris, assisted the nuns of St. Dijon Montmartre, Paris 'in their needs' by consecrating their major altar, 'in accordance with their

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[1] Otto of Freising, *Two Cities*, Bk. 7. XXXI. 331-32; also, *PL*, Lucius II, no. 83 (Mansi 21, 609; JL, 8684); *PL*, Eugene III, no. 311, 463/545 (*Decretales*, Gregory IX, Bk. 5. XVII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4; JL, 9508/9656); *LP*, 386-87; Bernard of Clairvaux, *Letters*, no. 243 (B.S. James, no. 319); *HP*, 59-65; Otto of Freising, *Gesta*, 61-63, 94, 143-44; Otto of Freising, *Two Cities*, Bk. 7. XXVII, XXXIV. 327-28, 335-36; Romuald of Salerno, *Chronicon*, 228; *Annales Casinenses*, 310; *Constitutiones*, 188-89, no. 134; *IP* 1, 180/9; F. Gregorovius, *History of Rome* 4/2, 492-506; Mann, *Lives* 9, 74, 131-38, 147, 156; B. Schimmelpfennig, *The Papacy* (New York, 1992), 157; M. Lambert, *Medieval Heresy*, ch. 4, esp. 50-54; R.L. Benson, *Political* renovatio, 344.

[2] C.R. Cheney, *Becket*, 66-67.

[3] C.R. Cheney, *Becket*, 68-69.

[4] See, for this and in general for the special papal support of the Knights Templar, ch. 2.3.

[5] On this, see, e.g., D.J. Birch, *Pilgrimage to Rome in the Middle Ages: Continuity and Change* (Woodbridge, 1998), esp. 150-85; G. Constable, 'Opposition to Pilgrimage in the Middle Ages,' *Religious Life and Thought (Eleventh-Twelfth Centuries)* (London, 1979), 125-46; D. Webb, *Pilgrims and Pilgrimage in the Medieval West* (London, 1999), esp. 51-152.

[6] *PL*, Eugene III, no. 369; *IP* 3, *403/31, *431/92; *IP* 4, *32/4; see also, *IP* 4, 46/2 (Mansi 21, 695; *Antiquitates* 4, 141 n.).

petition,' and by simultaneously granting any who should visit the place and give alms to the nuns on the anniversary of the consecration an indulgence of seventy days of the penance imposed.[1] A few months later Eugene issued an indulgence of seven days of penance to all visitors to the miraculous oratory of S. Iacopo, Pistoia,[2] ordering the bishops of Siena, Volterra, Florence, Lucca, and Luni in a separate letter to police and protect the pilgrim traffic to the oratory.[3] Thus, while the curia was aware of and utilising its authority to offer indulgences of remission even in diverse countries as a means of subsidising local churches, none of these acts actually concerned Rome itself, or the Patrimony, although pilgrim traffic remained the primary component of its economy: the use of indulgences as a subsidy for papal finances *per se* was not yet an active aspect of papal 'policy.' Otherwise, a few papal letters demonstrated an early experimentation with forms of what would eventually become papal provisions. On two separate occasions in this period the pope wrote to the bishop of Arras (1144)[4] and the bishop of Beauvais (1152),[5] asking that they provide prebends for two students—a protégé of Cardinal-bishop Imar of Tusculum and, supposedly, Peter Lombard, respectively. In a third instance, Eugene wrote to Abbot Suger of St. Denis ca. 1145-50 asking that he help relieve a papal subdeacon of 'the inevitable burden of debt...so that he himself might avail to progress in the study of letters.'[6] These letters are all certainly interesting in their own right, but they were not papal provisions in the proper sense, as they would later become.[7] These requests, rather, all took the form of highly personal recommendations for scholarships. Accordingly, the curia confined itself as yet largely to its traditional sources of revenue, and it continued to pursue its territorial 'policy' with considerable vigour throughout the rest of the century.

But given the overall failure of this 'policy' for most of the second half of the twelfth century, it would not be unreasonable to imagine that fees at the curia increased in significance during the same period. In fact, the heavily-indebted Alexander III would remain permissive about his cardinals receiving 'gifts,'[8] the illegality of which remained largely undefined in canon law. As a result, twelfth-century critics who oppugned the papal fee-based system wrote largely in a

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[1] *PL*, Eugene III, no. 194; at the same time, a privilege of protection was issued for the convent: *PL*, Eugene III, no. 193.
[2] *PL*, Eugene III, no. 47.
[3] *PL*, Eugene III, no. 46. Otherwise, two years earlier Eugene had stipulated in an encyclical an indulgence for all benefactors of the Hospitallers: PUF4, Nach. Gott., no. 22.
[4] *PL*, Lucius II, no. 52.
[5] *PL*, Eugene III, no. 480.
[6] *PL*, Eugene III, no. 417.
[7] On papal provisions, see, G. Barraclough, *Papal Provisions: Aspects of Church History, Constitutional, Legal, and Administrative in the Late Middle Ages* (Oxford, 1935).
[8] *Decretales*, Gregory IX, Bk. 5. III. 18. Later, the formulary, the *Ars Rhetorica* of Buoncompagno, a Florentine rhetorician at Bologna, would include searing examples of curial corruption and gibes aimed at Innocent III's own nepotistic practices—the work itself was celebrated at Bologna in 1215 in the presence of the law faculty. J.T. Noonan, *Bribes*, 161-62, 200-02.

legal vacuum left by the early canonists. 'Gratian,' for instance, had been far more concerned with simony, that is, the sale of the Spirit,[1] than the sale of justice—though, to the satirists and Parisian theologians, there was no real difference between the simoniac and the venal judge or lawyer.[2] And as such, less than one percent of the *Decretum* was actually devoted to the question of 'bribery,' to forms of corrupt justice or its sale, or to the taking of money or fees by judges.[3] It was only later canonists as well as the Parisian theologians around the beginning of the thirteenth century who took up the questions over current practices associated with the fee or gift-based system with any real subtlety. Broadly, they concluded, a judge should be supported by some kind of income for his services rendered; but he could not accept money in return for a judgement. The questions proved more difficult when it came to the various fees which could be exacted or were customary not for judgement *per se*, but for services performed: for the cost of the judge's travel or procuration and his officials' labour, or for achieving a settlement, for example. For the Paris theologians, judges should preferably be supported by independent resources and incomes; and since they did in fact normally enjoy large revenues attached to their dignities, they should demand nothing for their services. Peter the Chanter would have condemned as simoniacal even officials' fees charged for auxiliary services 'were it not for the fact that they were customary at the Roman court.'[4]

Similarly, both Peter the Chanter and Robert Courson also queried whether an ecclesiastical chancellor who held a benefice did not, as a Church dignitary, commit simony when he sold the appurtenances of his office, such as wax, pen, and notarial skill. As early as 1105 Bishop Ivo of Chartres had written to the cardinal-bishop of Albano that if one were to complain about or attempt to rid his local church of the exactions of its minor officials, they would simply 'defend themselves on the basis of the custom of the Roman Church, in which they assert that chamber-servants (*cubicularii*) and ministers (*ministri*) of the Sacred Palace exact much from consecrated bishops and abbots, which are disguised under the name of offering or blessing, although neither pen nor paper, in fact, might be had there for free (as they say).'[5] Nearly a

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[1] See, Gratian, *Decretum*, C. 1 qq. 1, 2.

[2] See, J.A. Yunck, *The Lineage of Lady Meed, the Development of Mediaeval Venality Satire* (Notre Dame, Ind., 1963), 149; J.W. Baldwin, *Masters*, 191-94.

[3] J.T. Noonan, *Bribes*, 147-50, citing Gratian, *Decretum*, C. 1 q. 1 cc. 126-30, C. 2 q. 6 c. 41, C. 11 q. 3 cc. 66, 71, 72, 78, 79, 83, C. 14 q. 5 c. 15, C. 23 q. 1 c. 5. Nevertheless, the contribution it did make, according to J.T. Noonan, 'left no doubt in legal theory and legal teaching that neither the Spirit nor justice could be sold;' in sum, judges were to receive absolutely no payments, while the lesser officials were only to be tolerated in as much from custom. J.T. Noonan, *Bribes*, 151. Of the canons cited by Noonan, however, only part of C. 11 q. 3 c. 66 and all of cc. 71, 78, 79, and C. 23. q. 1 c. 5 were actually in 'Gratian I's' first recension of the *Decretum*, thus greatly minimising the canonical tradition regarding corrupt practices of justice leading up to the first half or more of the twelfth century; see, A. Winroth, Decretum, 205, 207, 212, 214, 218.

[4] J.W. Baldwin, *Masters*, 191-92.

[5] Ivo of Chartres, *Epistolae*, *PL* 162, no. 133, col. 141-43.

century later the Parisian theologians would conclude, on the basis of later canon law, that an ecclesiastical chancery endowed with benefices should not accept anything for its seal or other services. Such a conclusion, however, was only a recommendation and not strict law. Both the Chanter and Courson recognised that the custom of charging fees was pervasive. And as they could not ignore the fact that the papacy, whose chancery was the model for the whole Church, was notorious for the fees and gifts which it required, the Chanter and his followers considered qualifications to the general principle. Thus, if chancery clerks were without regular income, they were permitted moderate fees.[1]

But because the papal system functioned as it did, whether properly legally or not, the curia was increasingly impugned by satirists in the twelfth and thirteenth centuries, so that by 1300 the avarice and venality of the Roman curia would become literary clichés.[2] Already in 1099 a tract was directed against the court of Urban II on SS. Albinus (white silver) and Rufinus (red gold), whose relics were indispensable for any successful visit to Rome.[3] And a goliardic poem, perhaps by Walter of Châtillon (fl. ca. 1170), would later beckon bloated wallets to go to Rome where 'there is physic for constipated purses.'[4] Walter—a friend of John of Salisbury and a student of law at Bologna—would in fact excel perhaps all others of his day in this type of satire.[5] But despite this, there is relatively little evidence of actual charges of corruption at or in the curia ca. 1150; while that which has come down to us was aimed primarily at the demeanour of cardinal legates. In the *Policraticus* (1159), John of Salisbury, who was critical generally of the venality of

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[1] J.W. Baldwin, *Masters*, 181-83.

[2] See, for this in general, J.A. Yunck, *Lineage of Lady Meed*, esp. 47-131, 143-59; J. Benzinger, Invectiva in Romam: *Romkritik im Mittelalter vom 9. bis zum 12. Jahrhundert* (Lübeck, 1968), esp. 74-118; J.T. Noonan, *Bribes*, 137-238; W.E. Lunt, *Revenues*, esp. 82, 92, 125-27; also, C.R. Cheney, *Becket*, 62-63, 66-69; C.R. Cheney, *Innocent III and England*, 109-10; I.S. Robinson, *Papacy*, 188, 198-99, 265; R.W. Southern, *The Making of the Middle Ages* (London, 1953), 152-53; R.W. Southern, *Western Society and the Church*, 111-13; J.W. Baldwin, *Masters*, 181-83, 191-92; R.L. Poole, *Medieval Chancery*, 134-35; J. Sayers, *Judges Delegate*, 89, 267-68; L. Little, *Religious Poverty*, 30-31; G. Barraclough, *Papacy*, 108; R. Brentano, *Two Churches: England and Italy in the Thirteenth Century* (Princeton, 1986), 10.

[3] See, *Tractatus Garsiae Tholetani canonici de Albino et Rufino*, *MGH Libelli de lite* 2, 423-35; see also, I.S. Robinson, *Papacy*, 198, 265; I.S. Robinson, *Institutions*, 424.

[4] J.A. Yunck, *Lineage of Lady Meed*, 103-05, here at, 105; see also, L. Little, *Religious Poverty*, 34.

[5] See, Walter of Châtillon, *Moralisch-satirische Gedichte Walters von Châtillon: Aus deutschen, englischen, französischen und italienischen Handschriften*, ed. K. Strecker (Heidelberg, 1929), esp. 18-30; also, J.A. Yunck, *Lineage of Lady Meed*, esp. 97-107. Walter Map perhaps rivalled him in his condemnation of Rome; see, Walter Map, *De nugis curialum*, D. 1. XXIII-XXV, D. 2. XVII; J.A. Yunck, *Lineage of Lady Meed*, 93, 105-09, 149-50, 159, 164-65, 183. C.R. Cheney, *Becket*, 67-68, pointed out that to preserve a sense of proportion about the costs and venality associated with litigating at Rome, 'we must remember that all law-courts suffered from the same fault. Richard of Anstey's bill of 71 pounds 15s. 5d. spent on two appeals to the curia is not excessive when compared with the 71 pounds 12s. 9d. he had spent in the court of Canterbury before appealing or with the 200 pounds 9s. 1d. which his activities in the king's court cost him. Theobald's next two successors at Canterbury both had to try to purify their courts. Whether Rome was worse than Canterbury or Westminster we cannot judge. The fact remains, however, that the outstretched palms at Rome corrupted litigants.'

law courts of his time,[1] did in fact single out the curia. Recalling an interview he had had with Adrian IV, to whom he confessed that, 'just as many have said, the Roman Church, which is the mother of all churches, exhibits herself to others not so much as a mother as a step-mother,' John admitted further, upon being pressed, that it was the common belief that while churches which had been founded through devotion shook and toppled, the pope, instead of looking to erect altars in the frontier, built palaces and despoiled the provinces; while the members of the curia themselves were no more than great shakedown artists.[2] For Eugene III in particular, under whom John of Salisbury spent some considerable time at the curia, he was more tactful, confessing that although this pope was distrustful of his 'flanks,' he himself was beyond reproach when it came to questions of venality.[3] Rather, under Eugene, John's accusations of impropriety were directed primarily at certain cardinals, most of whom, nevertheless, were promoted within the cardinalate either during or following Eugene's pontificate: e.g., the cardinal-priests Guido de Summa;[4] the chamberlain Jordan; and Guido(5) Puella; and the cardinal-deacons Octavian;[5] Guido(4) de Crema;[6] Gregory(2);[7] Cencius;[8] and John(3) Paparo.[9] At the same time, he actually commended the probity of only two of Eugene's cardinals: Cardinal-bishop Gaurinus of Palestrina (1144-58?) and Cardinal-deacon Bernard(2) of SS. Cosma e Damiano (1152-53), who, between them, have been identified in only one papal letter of the period 1143-53.[10]

In his perhaps most disparaging account, John of Salisbury recounted that cardinal legates were sent to Germany and the court of Conrad III ca. 1151: the cardinal-priests Jordan of S. Susanna (1145-54) and Octavian of S. Cecilia (1151-59), 'equally dissimilar in profession and manners, except that both were greedy and rapacious in their way.' Octavian, 'both more noble of birth and more friendly in address and more liberal in his beneficence, was haughty and pompous,

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[1] See, e.g., John of Salisbury, *Policraticus*, ed. C.C.I. Webb (Oxford, 1909), Bk. 5. XI; also, J.A. Yunck, *Lineage of Lady Meed*, 148-49.

[2] According to John of Salisbury, the members of the Roman Church 'shake down the churches, stir up lawsuits, and bring the clergy and populace into hostility; they by no means sympathise for the labours and miseries of the afflicted, they die for the spoils of the churches, and they reckon all piety as profit. They render justice not so much for the truth as for a price. For today you will obtain everything for a price, but nothing tomorrow without one. They often do harm, and in this they imitate demons because they claim to help when in fact they do not desist in doing harm, with a few excepted, who actually fulfil the name and office of a pastor. Thus, the Roman pontiff himself is both heavy and nearly intolerable to all.' John of Salisbury, *Policraticus*, Bk. 6. XXIV. 623-24.

[3] On the arc of Terracina in the Patrimony, Eugene himself had this engraved: 'Lest [the judges] would seek anything from anyone, or lest they would accept anything from anyone before a cause would be decided, they were to receive modestly, moderately, and with acts of thanks anything offered after the decision.' Mansi 21, 626 (*APRI* 3, no. 112; *IP* 2, 119/7).

[4] Promoted as bishop of Ostia (1149-51).

[5] Promoted as cardinal-priest of S. Cecilia (1151-59); also the future Antipope Victor IV.

[6] Promoted as cardinal-priest of S. Maria in Trastevere (1158-64); also the future Antipope Paschal III.

[7] Promoted as bishop of Sabina (1954).

[8] Promoted as cardinal-priest of S. Lorenzo in Lucina (1152-54) and bishop of S. Rufina/Porto (1154-57).

[9] Promoted as cardinal-priest of S. Lorenzo in Damaso (1151-54).

[10] See, Appendix 2.

a lover (*cultor*) of the Germans and the greatest seeker of the favour of the Romans—which he never had.' Jordan, on the other hand, 'under the pretext of the Carthusian Order, wearing mean clothing and severe in speech and bearing, also sparing of expenses, hid his avarice and, since like order attracted like, had been made chamberlain of the lord pope.' The pope had ordered the pair upon departure to be moderate, to 'refrain more from exactions than if they were being sent to the king of Sicily, for the Germans always plotted more against the Roman Church and have ever so often oppressed it from the slightest cause.' But the two legates quarrelled throughout the duration of their legation and caused scandal by their corruption, leaving 'the Roman Church a laughing-stock' and 'hated and contemned in the land:' as 'tormentors of men and extorters of money, they oppressed the innocent and shook out the money-boxes,' causing 'swarms of appellants' to 'fly off to the papacy.' In consequence, the pope wrote to the legates 'ordering them to amend their ways, but in vain. He wrote again to recall them, and they suppressed the letters.'[1] In general, the growth in the numbers and responsibility of cardinal legates provoked criticism, so that independent praise of legatine conduct remained quite rare in the twelfth-century literature.[2] Specifically, the retinues of legates became a source of resentment for the churches, given the nature of the obligation which by the thirteenth century would be called *procuratio*. Gerhoh of Reichersberg complained (ca. 1161-62) that some such retinues contained 'forty horses or more,' which presented a serious fiscal challenge to all houses obliged to feed and accommodate legates.[3] And, in fact, according to John of Salisbury, Eugene attempted to alleviate the problem in 1151 by fixing the size of the retinues of the legates, 'commanding that Jordan should on no account have less than fifteen or Octavian more than twenty horsemen (*equitaturas*).'[4]

Similarly, in the *De consideratione,* Bernard of Clairvaux was careful basically to direct criticism of curial malpractice onto those who were 'around' the pope, especially onto the lawyers

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[1] *HP*, 75-77; also, Otto of Freising, *Gesta*, 110.

[2] Cardinal-bishop Alberic of Ostia (1138-48) was remembered by contemporaries as a model of correct legatine conduct: Richard of Hexham, *De gestis regis Stephani, Chronicles of the Reign of Stephen, Henry II, and Richard I* (Rolls Series 82/3: London, 1886), 167, cited by, I.S. Robinson, *Papacy*, 161. The cardinal-priest Gerard(3) of S. Croce in Gerusalemme, the future Pope Lucius II, was similarly lauded by Gerhoh of Reichersberg in the middle of his denunciation of 'the pride of legates in modern times.' Gerard(3) and his co-legate Martin were commendable in part because of the modest size of their retinues, which included only nine or ten horses. This was rare, according to Gerhoh, then or in his own time (1161-62). Gerhoh of Reichersberg, *De investigatione*, 358.

[3] Gerhoh of Reichersberg, *De investigatione*, 357. In another work, Gerhoh noted that the cardinal-deacon Gregory(2) of S. Angelo (later cardinal-bishop of Sabina [1154]), as a legate to Germany in 1153, placed the abbot of St. Albans, Mainz under interdict 'because the dinner which was prepared for him and his retinue...was less sumptuous than he desired,' until the abbot 'redeemed for a great sum of money the office and honour which had been denied to him.' Gerhoh of Reichersberg, *De quarta vigilia noctis*, *MGH Libelli de lite* 3, 513; see, I.S. Robinson, *Papacy*, 147, 159, 161-62.

[4] *HP*, 76. Later, at the Third Lateran Council in 1179, Alexander III would set a definite limit of twenty-five horses to the retinue of a cardinal. Ecumenical Councils 1, 211-25 (Mansi 22, 212-33; JL 2, 340-41), Third Lateran Council, c. 4 (here at, 213); also, I.S. Robinson, *Papacy*, 163.

at the curia and what he perceived as widespread legatine corruption.[1] But Bernard, at least, unlike John of Salisbury, was discreet enough to avoid naming names. According to J.T. Noonan, on the other hand, the *De consideratione* accused Eugene III personally of two implicit faults: an 'easy credulity' and the taking up of persons (*acceptio personarum*).[2] 'It is no small sin,' Bernard remonstrated, 'if in this way you lift up the faces of sinners and do not judge cases on their own merits.'[3] The other sources of the period provided little extra insight into this subject which perhaps would have been a delicate one in the curia where the pope as a matter of routine exercised his ability to dispense benefits and favour, thus the many privileges of protection issued which surely 'took persons up,' though not in the judicial sense. Indeed, most if not all of these privileges surely involved some kind of fee or payment, or 'gift'—although very few of these privileges issued in this period actually stipulated a annual *census* payment. Likewise, political networks were still largely personal. The line between favour and the taking up of persons was invariably thin. In a singular instance, Eugene III himself opened a letter to the archbishop of Tarragona in February 1153 with an *arenga* roundly condemning the taking up of persons: 'He who has been erected a judge offends the principles of the divine majesty and the integrity of the celestial advocate if, for the sake of the glory of anyone whomsoever, or the taking up of persons, or humility, he neglects justice. For, impartiality is the scales of justice. And we, having been placed through the arrangement of the Lord in the lofty and eminent watchtower of the apostolic see, administering the legation of Christ, are debtors to both great and lesser men, wise and unwise men, in their own rights.'[4]

In juxtaposition to this, in numerous other *arengae*, well-earned repayment of loyalty, devotion, and service to the papacy rang out as a positive virtue of good rulership:[5] 'The authority of our office demands that we esteem more readily those whom we recognise to be more devoted towards the holy Roman Church and us ourselves and confirm for them their justice with the fortification of the apostolic see.'[6] 'Although we are debtors to all of the sons of the holy Church from the office of the apostolate enjoined upon us, nevertheless, it is proper that we more readily

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[1] *De consideratione*, Bk. 4. V. 14 (128), Bk. 4. IV. 12 (124-25).
[2] J.T. Noonan, *Bribes*, 153.
[3] *De consideratione*, Bk. 2. XIV. 23 (77-78). Peter the Chanter would later conclude that bias in administration was even comparable to bias in judging: the appointee 'taken up' was guilty of simony—spiritual goods were to be bestowed *gratis*, not for a consideration. While a cardinal, Innocent III—who would call some of these Parisian scholars into his service—included chapters on *De acceptione personarum*, *De iniquis muneribus*, and *De venditione iustitiae* in his *De miseria humane conditionis*. Cardinal Lotharius (future Pope Innocent III), *De miseria humane conditionis*, ed. M. Maccarrone (*Thesaurus mundi*: Lucca, 1955), Bk. 2. IIII-V. As pope, Innocent formally condemnded by law the taking up of persons; see, J.T. Noonan, *Bribes*, 175-207; see also, C.R. Cheney, *Innocent III and England*, 116, 134-41.
[4] Appendix 1, no. 215 (*PL*, Eugene III, no. 569).
[5] See, Appendix 1, no. 25, 33, 36, 41, 42, 58, 76, 91, 92, 93, 94, 159, 163, 197, 206, 207, 208, 209, 210, 211, 212, 213, 214, 216, 217, 218, 219, 255, 269, 275.
[6] Appendix 1, no. 209 (*PL*, Eugene III, no. 131).

assent to, with the zeal of charity, those places and persons which are recognised to pertain specially to the holy Roman Church.'[1] Similar examples could be counted several times over.[2] Thus, there appeared apparently nothing untoward about the papal chancellor, the Englishman Cardinal Robert Pullen, writing to the archbishop of Canterbury and the bishop of Hereford in 1145 that he wanted them to know that 'Joseph, prior of the monastery of Sherborne, is our uncle's son and that many in the same monastery are closely related to us.' Therefore, he added, because a certain cause concerning the same Joseph and his monastery was being delegated to the English archbishop and bishop, and 'because it particularly behoves us to be solicitous for the sake of those who are bound to us by consanguinity, we order by asking earnestly your probity to show itself to be of such a kind in handling and managing the business and justice of the aforesaid prior and his monastery that it is seen that our prayers before you are of use to them and we might avail thereupon to thank you.' To that, a further boon was craved: that they would see that the same prior was somehow reimbursed for the expenses which he incurred on the journey to Rome and which he had borrowed from creditors.[3]

The contradistinction of messages here indicates that there were inevitably sometimes conflicts of interest. But the only positive evidence for outright corrupt practice at the curia in this period again came from John of Salisbury, describing two divorce cases tried before Eugene III. In the first, that of the southern Italian count of Molise (ca. 1150-51), John of Salisbury stated that the bishops of his country pressed the cause of the count as they knew it would please the king of Sicily, and that the count himself had bribed the curia, so that when the case came under discussion 'there were not two people to oppose it.' Eugene, however, refused either to admit the party's witnesses or grant the divorce, prevailing upon both parties as well as the entire assembly with tearful eloquence.[4] In this case, however, Eugene had political motives not to appease the Sicilian king in 1150-51, as the diplomatic constellation vis-à-vis Roger of Sicily and the German crown had begun to shift around this time. Eugene had already used up Sicilian aid in an ultimately unsuccessful campaign against the Romans throughout 1149, retiring from Rome, amidst renewed opposition, after a brief tarriance in the early summer of 1150. Immediately thereafter Eugene resolved the great ecclesiastical disputes between Roger and the curia without, however, reaching a satisfying resolution on all of the outstanding territorial questions; so that in April 1151 Roger would crown his son without papal permission. At the same time, the Roman senate had entered into discussions with Conrad III inimical to the papal interest; while Conrad himself had already opened up communications with the curia having at length resolved to undertake an Italian

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[1] Appendix 1, no. 210 (PUF6, no. 62).
[2] See, e.g., Appendix 1, no. 216 (*PL*, Celestine II, no. 42), 211 (PUF2, no. 43 [JL, 8961]).
[3] PUE3, no. 48
[4] *HP*, 80-82 (*IP* 8, *46/175; *IP* 9, *172/1); see also, *HP*, 75-77, 99-100.

campaign, with the continuing looming threat of a coordinated German-Greek campaign intending the carve up central and southern Italy between the two empires.[1]

In the other case, that of Count Ralph of Vermandois in March 1148, the pope allowed himself to be acutely compromised. Ralph had already been excommunicated for three years for leaving his wife and contracting another 'unlawful' marriage with the sister of the French queen. After King Louis VII himself, about to set off on crusade, 'vigorously interceded on the count's behalf,' and 'with the help and advice of the cardinal-deacons John(3) Paparo and Gregory(2) of S. Angelo, and not without the suspicion of bribery, he was able to gain absolution. The count took, as previously he was unwilling to do, an unconditional oath of obedience to an eventual papal ruling, as he now knew in advance what the pope would command.' John of Salisbury reported that throughout the proceedings Eugene acted with noticeable shame for rescinding the sentence of Innocent II, Celestine II, and Lucius II, 'as he believed it was a most just sentence.'[2] The event itself took place probably within three months of the composition of *Book Two* of the *De consideratione*, in which, according to Noonan, Bernard accused Eugene of the taking up of persons. Bernard in fact had qualified this insinuation by acknowledging that Eugene had presided so far 'without much complaint about any of these things;' but, Bernard here put this case to the pope directly without mentioning it by name. And thus to the pope who yielded to expediency, Bernard wrote, 'whether you are guiltless, you alone know.'[3]

Bernard's question notwithstanding, another aspect of all ecclesiastical justice which disquieted observers certainly by the late twelfth century was what was perceived as a culture of lawyers. Eventually, because of delays and lengthy procedures at the curia, some corporations would retain resident proctors in Rome, who, by the second half of the thirteenth century at least, had assumed a large chunk of the lobbying activities at the curia. These professionals had experience and savvy regarding the intricacies of the systems and those individuals who ran it, and thus could often serve their clients better by proxy. At the same time, however, the proctors had an interest in perpetuating the system. For lawyers, generally, their principal temptation was to defend causes they knew to be unjust; and to the Parisian theologians ca. 1200, their greed was not only vicious in itself but spawned other temptations. As a class the theologians were wont to expose the

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[1] See, *HP*, 51-77; *LP*, 387; Romuald of Salerno, *Chronicon*, 228-30; *Annales Casinenses*, 310; *Annales Ceccanenses*, 283-84; Otto of Freising, *Gesta*, 54-69, 106-11; John Kinnamos, *Deeds of John and Manuel Comnenus*, 71-72; Theiner 1, 13-15; *LC*, 330, 375-85; *Constitutiones*, 185-203; *PL*, Eugene III, no. 354, 357, 359, 367, 382, 390, 395, 465, 466, 484, 524, 568, 577; *IP* 1, 28/18-20, 55/7, 142/33, 171/1-3, 180/9, 187/5, 192/2-3, 198/5; *IP* 2, 79/4, 158/13, 169/5, 169/6, 207/1-3; *IP* 3, 4/14; *IP* 8, 44/169-70, 45/171-74, 226/53; *IP* 10, 243/1, 275/2; Nachträge zu den römischen Berichten, no. 8 (*IP* 1, 141/31); *APRI* 3, no. 112 (Mansi 21, 626; *IP* 2, 119/7); Varietà, no. 400-03, no. 1 (*IP* 1, 173/3; JL, 9604); Wibald, no. 147, 198, 214, 215, 216, 218, 231, 237, 240, 243, 244, 245, 246, 248, 249, 251, 252, 273, 276, 278, 279, 280, 281, 282, 297, 298, 334, 340, 345, 346, 347, 404, 410.

[2] *HP*, 12-13.

[3] *De consideratione*, Bk. 2. XIV. 23 (77-78); see, J.T. Noonan, *Bribes*, 153.

'ruses and deceits' by which lawyers used their training and profession to an advantage. Consequently, the study and practice of law, as with judicial corruption, likewise became a common target from the second half of the century of satirists, who often bracketed lawyers with usurers. The canonists, however, who were lawyers in their own right, would from the second half of the twelfth century generally countenance appropriate fees for the services of lawyers and jurists, as for teachers, especially if they lacked regular incomes.[1] The basic problem, consequently, was the perception, no different than in modern times, that lawyers were principally motivated by gain and greed, not justice.[2] According to Stephan of Tournai (ca. 1200), even the decretalists were actuated by corrupt motives, employing dishonest methods, and yielding, in practice, 'an impenetrable forest of decretal letters' employed by corrupt and prevaricating lawyers who thereby increased the profits of their profession.[3]

For evidence closer to the period at hand, little has been left to support such an image at the curia or in the Church at large beyond the very significant and lengthy comments of Bernard of Clairvaux in the *De consideratione*. To begin with, Peter the Chanter himself, noting the practice of pleaders to overwhelm the courts with the din of their clamours, pointed out that Eugene III once 'imposed silence upon all until he had been able to hear from the plaintiff and defendant of a case a simple account of the case.'[4] And before him, John of Salisbury—although he acknowledged that Justinianic Law recognised the lawfulness of payments to lawyers[5]—lamented that the students, who paid fees for their education, 'reckon riches to be the only fruit of wisdom,' as with the completion of their studies they all expected in turn to be supported by cash fees.[6] Beyond this, we

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[1] The Parisian theologians would also allow moderate lawyer-fees under certain conditions; see, Peter the Chanter, *Verbum abbreviatum*, *PL* 205, ch. 51, col. 159-61; J.W. Baldwin, *Masters*, 191-94; J.A. Yunck, *Lineage of Lady Meed*, 158 and n. 50.

[2] On this, see, J.A. Yunck, *Lineage of Lady Meed*, 143-59; J.A. Yunck, 'The Venal Tongue: Lawyers and the Medieval Satirists,' *American Bar Association Journal* 46 (1960), 267-70; J.W. Baldwin, 'Critics of the Legal Profession: Peter the Chanter and his Circle,' *Proceedings of the Second International Congress of Medieval Canon Law*, ed. S. Kuttner and J.J. Ryan (Vatican City, 1965), 249-59; J.W. Baldwin, *Masters*, 117-123, 191-98; G. Post, 'Masters' Salaries and Student-Fees in the Medieval Universities,' *Speculum* 7 (1932), 181-98; G. Post, K. Giocarinis, and R. Kay, 'The Medieval Heritage of a Humanistic Ideal: *"Scientia donum dei est, unde vendi non potest,"*' *Traditio* 11 (1955), 195-234; L. Little, *Religious Poverty*, 31-33, 38-39, 92-93, 174-77; C.R. Cheney, *Becket*, 75; I.S. Robinson, *Papacy*, 199-202; J. Van Engen, *Crisis of Cenobitism*, 301.

[3] Stephen of Tournai, *Epistolae*, *PL* 211, no. 251, col. 516-18; also, I.S. Robinson, *Papacy*, 199-202; see also, M.G. Cheney, *Avranches*, 182-83.

[4] J.W. Baldwin *Masters*, 195 and n. 151, who provided the Latin from an unpublished, longer version of Peter the Chanter, *Verbum abbreviatum*, than that in *PL* 205, col. 21-528, at ch. 51 (*PL* 205, col. 159-61): *Permitte igitur clientem iudici enucleare facti veritatem. Exemplo Eugenii papae qui omnibus advocatis indicebat silentium quousque ab auctore et reo audisset facti simplex iudicium facti...*; a marginal comment notes, *sicut hodie fit in curia romana.* The canons, in fact, according to J.W. Baldwin, *Masters*, 195 n. 152, recognised the right of judges to remove noisy lawyers.

[5] John of Salisbury, *Policraticus*, Bk. 5. XIII. 573; see also, J.A. Yunck, *Lineage of Lady Meed*, 158 and n. 50.

[6] John of Salisbury, *Metalogicon*, ed. J.B. Hall (*Corpus Christianorum: Continuatio mediaevalis* 98: Brepols, 1991), Bk. 1. IV. 20; see also, L. Little, *Religious Poverty*, 31-33, 38. J.A. Yunck, *Lineage of Lady Meed*, 145, noted that the complaint was common in the twelfth century that 'clerks were forsaking theology

are left fairly little from the papal record itself. The papal concern to patronise students has been duly noted; otherwise, it is clear that there were professional jurists associated with the curia by 1150: *magistri*, for instance, appeared in the papal letters of 1143-53 definitely pleading or in the course of judicial procedure a handful of times;[1] additionally, *sufficientes responsales*,[2] 'proctors,'[3] and 'advocates'[4] at court appeared rather more often. The procedure described by the protocol of Huesca, however, proved that lawyers and advocates were being used in procedure at the curia as seemingly a matter of routine, at least for ecclesiastics who could presumably afford their services.[5] Otherwise, Bernard of Clairvaux was explicit about what he saw as a deplorably corruptive culture of legalism and lawyers if not actually in the curia at least around it: 'every day laws resound throughout the palace, but these are the laws of Justinian, not of the Lord...these are not so much laws as wrangling and sophistry, subverting judgement.' How could a Cistercian pope, he addressed Eugene III, 'as bishop and shepherd of souls, allow the law to stand silent before you while these others rattle on? I am at a loss if this perversity does not cause you anxiety.'[6] For Bernard, in general, in fact, there was no doubt that the papal court or justice had become overwhelmed by so many corruptive influences so as to become harmful in itself, and that, as a result, it was regarded by many in the provinces with cynicism. This is treated at length below. Significantly, however, at the same time that Bernard was putting his comments to paper (ca. 1152), that great onrush of appellants and petitioners seeking the pope's court and justice was still beginning to grow. Yet this unsettling phenomenon in and of itself probably contributed significantly to the fervour of Bernard's appraisal.

6.3 APPEAL ABUSE AND DISHONEST LITIGATION

S. Chodorow's informative study of the forms and prevalence of 'dishonest litigation' at the papal court in the second half of the twelfth century[7] was based upon decretals registered in the private

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to study law, leaving piety for profit,' as Peter the Chanter, *Verbum abbreviatum*, *PL* 205, ch. 51, col. 160.

[1] See, *IP* 7/1, *323/1; PUE2, no. 45; PUS2, 62, 68. For the mention of *magistri* not in the context of pleading, see, *PL*, Lucius II, no. 92; *PL*, Eugene III, no. 185, 186, 187, 203, 209, 329, 465, 466, 480, 543; *IP* 6/2, 119/6; PUS1, 57; Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45); PU in Ligurien, 1 (*IP* 6/2, 382/1); Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4).

[2] See, *PL*, Eugene III, no. 101, 322, 324, 425 , 447 , 450, 569, 588; PUF5, 69 (JL, 8823); PUF2, no. 41; PUF1, no. 44; PUS2, 67.

[3] See, *IP* 2, 171/1; *IP* 9, 77/1; APRI 2, no. 94 (JL, 9478), 95 (JL, 9480); *EPRI*, no. 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959); PU in Campanien, 10 (*IP* 2, 147/4).

[4] See, *PL*, Eugene III, no. 534 (*Decretales*, Gregory IX, Bk. 2. VII. 4; JL, 9653); *IP* 7/2, 108/3; *LC*, 380-82, no 91(*Antiquitates* 3, 793-96; *IP* 3, 241/14); APRI 3, no. 75 (JL, 8916); PUF5, 76; PUS2, 46, 68; Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256); PU in Padova, 3 (*IP* 7/1, 315/6).

[5] See, ch. 3.5.

[6] *De consideratione*, Bk. 1. IV. 5 (32).

[7] S. Chodorow, *Dishonest Litigation*, 187-206.

collections, which alone, he argued, must have been the source for the canonical tradition regarding the problem, as there came a 'progressive definition of permissible and impermissible court practice as the experience of handling cases accumulated in the church courts of the twelfth century.' He described dishonest litigation as abuse of the papal judicial system by litigants who acted in an attempt to deceive or to manipulate illegally the courts. This was always a problem for courts, to be sure; but such litigants became a particular preoccupation of papal and lesser ecclesiastical judges in the second half of the twelfth century, when bishops and others increasingly began to ask the pope what to do about such people: how to deal with them as they deserved while at the same time preserving the rights of honest litigants. As a result, papal decretals increasingly came to contain instructions on the problem. At the same time, the canonists also became concerned with such litigants, proposing ultimately that every papal letter contain explicitly or implicitly the qualification *si preces veritate nitantur*.

Various forms of dishonest litigation were practised which may have been either outright illegal or came to be so recognised in the course of the twelfth century: for instance, the deception of judges or courts through such stratagems as fabrication, *suggestio falsi*, or the suppression of evidence or information; the use of forgeries; or the abuse of appeal to delay, elude, or frustrate. More subtly, litigants could manipulate the courts through what Chodorow termed the disingenuous 'creation of fact situations' upon which judgement might be given or settlement made.[1] He reasoned, generally, that the development of an ecclesiastical judicial hierarchy and of the law governing the transfer of cases from one of its levels to another made it possible for litigants to use the courts both as centres of dispute resolution as well as instruments of their will. More importantly, the law on appeal itself gave both honest and dishonest litigants considerable room to manoeuvre, as it allowed any party to appeal to Rome at virtually any time; and consequently the potential for canonical suits to drag on and thus acquire extremely complicated procedural histories opened up sufficient room for abuses.

Under these circumstances, according to Chodorow, parties from the second half of the twelfth century could and did often appeal to the pope without either judge or opponent cognisant of the act; while the curia responded often solely on that single party's *ex parte* statements. The onus was on the opponent's party to chase the appellant to 'Rome' and thereupon present its own case before the pope before letters of justice were issued. Often enough, however, the opposing party arrived too late, and thereby sought on its own account letters based on its own claims. Occasionally, the original appellant succeeded in obtaining judgement prior to his opponent's

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[1] For instance, Lucius III would write concerning two clerics who—as in any spurious suit settled prior to judgement but under the courts' authority—created a dispute over a benefice and then settled it through a transaction involving money, thus effecting a type of simoniacal land transfer. S. Chodorow, *Dishonest Litigation*, 195; see also, *Decretales*, Gregory IX, Bk. 1. IX. 5 (JL, 16,629), Bk. 5. XXII. 3 (JL, 14,028); *Compilatio secunda*, Bk. 1. IX. 2 (JL, 15,164).

impetration of new letters on the basis of which a new and contradictory judgement would be made. Chodorow mentioned the existence of extant papal letters from the second half of the twelfth century in which such cases were unravelled and committed to judges delegate yet a third time. In every such event, he concluded, the litigants had in effect used the papal court as an instrument, since the curia had acted without prior consideration of contradictory evidence and the relative positions of the opposing parties. 'A system that permitted such a wide latitude to parties and that regularly acted on *ex parte* presentations made it difficult to determine where the line between partiality and dishonesty lay,' especially as 'what was considered an abuse of process was neither so harsh nor so broad in the Middle Ages as it is today.'[1] The *Decretum* itself had not anticipated or addressed most of the problems and the potential abuse to which these systems and procedures could give rise,[2] so that resolution of these things, in terms of papal legislation, was left to Alexander III and his successors.

Ultimately, however, papal legislators and canonists were only ever able to devise stop-gap measures for specific methods or avenues of abuse which in any event proved basically ineffectual. The fact was, no feasible legislative or executive decision could ever have compensated for the fundamental logistical problems of geography and the limits of knowledge, communication, and travel. Indeed, beyond the more technologically complicated and heinous matter of the introduction of forged documents, distance itself—as in the case of false suggestion and suppression—which otherwise might be a great disadvantage to any potential actor, was a good cover for fraud. As C.R. Cheney noted, the temptation to tell a good story at the curia when the means of verifying facts were as many as thousands of miles away would have been a strong one. Further, the curia would have been necessarily largely ignorant of the precise geographical details of a province as far off as say England; and thus could not always know that it was committing a case to a judge residing at an impractical distance from one or more parties.[3] Distance also, and perhaps especially, served frustratory appeals—i.e., evasion—while the haphazard nature of papal registers, which remained far from comprehensive throughout the twelfth century, and thus a less than adequate system for recording papal actions, allowed dishonest litigants added room for deception.[4]

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[1] S. Chodorow, *Dishonest Litigation*, 187-88; see also, on the use the papal court as an instrument of one's will, J.C. Moore, *Baldwin*, 79-89.

[2] See, S. Chodorow, *Dishonest Litigation*, 197-98.

[3] According to C.R. Cheney, the reference books at the disposal of the curia in fact did not even enable it to know whether a house was an abbey or priory, although the conditions of the twelfth century, he added, could not allow it to be otherwise. C.R. Cheney, *Becket*, 65.

[4] See, C.R. Cheney, *Becket*, 65-66; *The Letters of Pope Innocent III (1198-1216) concerning England and Wales*, ed. C.R. Cheney and M.G. Cheney (Oxford, 1967), ix-xi; S. Chodorow, *Dishonest Litigation*, 188, 193; I.S. Robinson, *Papacy*, 197. Letters of justice based on fraudulent statements actually came under the law on forgeries. It has been pointed out that the canonists considered them as such since, though they were authentic documents, they did not conform to the will of their author; see, P. Herde, 'Romisches und

In fact, in the *De consideratione*, Bernard of Clairvaux already declared that the problems of abuse and dishonest litigation at the curia were rampant in his day. For Bernard, the potential for abuse was both a product of his current culture and an inevitable ancillary of the current systems of papal justice. The customs of men and clerics in his time had changed, he determined: 'Fraud, deceit, and violence run rampant in our land; false accusers are many; a defender is rare. Everywhere the powerful oppress the poor.' Thus, while justice necessarily had to be doled out, the problem was that the current state and procedures of the papal system only seemed to actuate or perpetuate injustices: if they did not welcome and facilitate opportunistic and artful litigants, they were at least toothless in combating them. To Bernard's astonishment, as a result, he saw the pope and curia controlled by unscrupulous lawyers; while the entire papal judicial system was plagued by all manner perjury, wrangling, evasion, and forms of intimidation: money, power, deceit, and greed were the means to justice. In sum, the system was inherently inept or corrupt; and at the root of the problem was the papal system of appeal. The facility of one to cause costly delays became a tool of the ambitious, and ambitious men were everywhere in the Church. Accordingly, in his own sure manner, Bernard dismissed any thorough need for procedural fairness at the curia: most cases could be dismissed outright, without any hearing at all, so blatant was their worthlessness; while those that merited prosecution the pope could and should allocate to others. Indeed, so impudent were most of the petitioners at the curia that 'they flaunt themselves before the public conscience in a trial where they provide sufficient evidence to condemn themselves.' Yet, neither the pope nor anyone else sought to check such widespread temerity: 'where all are filthy, the stench of one is hardly noticed.' Like Christ, the pope's house of prayer had become a place of business; yet, unlike Christ, the pope did not allow the moneychangers and businessmen who crowded his court to embarrass him, nor did he give them reason to fear.[1]

As to whether or not Bernard was keenly attuned to the state and abuses of the papal judiciary as far as concerns dishonest litigation, the evidence is not readily available. Without the benefit of comparable analyses of the records of previous and later pontificates it is difficult if not impossible to accurately gauge the extent of the problem as gleaned from the papal letters of 1143-53. For that matter, the occurrence of practices or accusations of dishonest litigation in the record itself is not always made explicit; while it is indeed impossible to gauge the extent to which the curia was in fact ultimately oblivious to successful dishonest litigants. Conversely, in at least one case, as would be revealed only under later administrations, the curia in this period apparently erred in accusing and condemning actors for fraudulent behaviour, as in the case of the bishops of

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Kanonisches Recht bei der Verfolgung des Falschungsdelikts im Mittelalter,' *Traditio* 21 (1965), 291-362, esp. 323-32; S. Chodorow, *Dishonest Litigation*, 191, 193, 197; *Decretales*, Gregory IX, Bk. 1. III. 10 (JL, 15,208).

[1] *De consideratione*, Bk. 1. XI. 13-14 (43-46).

Huesca versus Roda in early 1145.[1] From the broader perspective of papal diplomatic, it was perhaps with the threat of deceit in mind that the curia opened letters of sentences with various *arenga* statements advising that 'those things which have been decided with the truth of a judgement ought to be commended to the memory of letters, lest in future they are able to be disturbed by the ill-designs of wicked men.'[2] The irony, however, concerning the increased production and use of written records at the curia, and indeed, in ecclesiastical courts generally, was that they simultaneously protected against fraud while opening up new avenues and opportunities for defrauding. Forgery in this period, however, does not appear to have been a serious problem—at least as far as it was not often detected. Otherwise, it appears from the papal record itself that the papal judicial system was being at least periodically beset by various forms of litigious chicanery, whether or not the nature of the papal appellate and judicial system itself facilitated such practices, which would at least appear to have been the case with appeal-abuse, which itself emerged as having been the most apparent and common form of abuse of the papal systems in the period 1143-53.

Nearly a century and a half ago W. Stubbs concluded that 'the mischief of appeals' had caused, by the end of the twelfth century, 'the paralysis of judicial power in the English Church,' as it was practically open to any contumacious priest to appeal to Rome, thus removing him at once from the authority of his diocesan and under the protection of the curia, regardless of his case's merits.[3] Indeed, as early as 1075 prelates had complained that the right of papal appeal was undermining episcopal authority: its effect was 'to arm sons against fathers, to confound the rights (*iura*) of reverence and piety.'[4] The 'frustratory' or evasive appeal was seemingly the most common form of appeal-abuse. Taken over from Roman Law, which allowed the possibility of appeal only after the decision, the appellate system as embodied in canon allowed appeal at any moment in the course of the suit. And once lodged, the effect of an appeal to Rome was immediate: all proceedings had to stop, pending instruction. Furthermore, once a papally delegated cause was commenced in the locality procedure was extremely long and complicated, with many delaying mechanisms already built into it for the defendant; all of which made legal

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[1] See, ch. 3.5.

[2] Appendix 1, no. 137 (*PL*, Lucius II, no. 40); see, generally, Appendix 1, no. 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151; see also, in the context of the letters, Appendix 1, no. 52, 155, 215, 245.

[3] At Rome, 'all-powerful money could purchase, or wearisome pertinacity extort, a mandate: pains and penalties would follow the refusal of the bishop to obey; from that moment he ceased to be a judge and became a defendant; and that under a charge on which the Italian lawyers never acquitted a bishop.' W. Stubbs, 'Chronicles and Memorials of the Reign of Richard I' 2, *Historical Introductions to the Rolls Series*, ed. A. Hassall (London, 1902), 366-438, here at, 436-37.

[4] Archbishop Udo of Trier to Gregory VII, *Die Hannoversche Briefsammlung*, ed. C. Erdmann, *Briefsammlungen der Zeit Heinrichs IV.* (*MGH* Die Briefe der deutschen Kaiserzeit 5: Munich, 1977), 38-41, here at, 39, no. 17.

evasion relatively facile. As a result, someone threatened with disciplinary action by an ecclesiastical superior, or facing certain defeat in litigation, or harbouring a desperate or realistic hope that something might turn up, had only to appeal to Rome. In either case, he bought himself considerable time—upwards to a year or more. And either party, holding a possession illegally or unfairly, could continue to do so, reaping the dividends, for the length of the cause.[1]

Again, Bernard of Clairvaux certainly saw the problem clearly enough, sparing no ink on the topic in his *De consideratione*. Appeal was made to the pope from around the world, he owned, and this indeed was testimony to his own 'unique primacy.' But if he was a wise pontiff, he would not have rejoiced in the primacy itself but in its fruits. Utterly lacking its intended benefits, however, Bernard roundly condemned the entire system of appeals as it operated in its current state, only to encourage and facilitate dishonest motives and tactics. The refuge of papal appeal had been completely turned on its head: what was envisioned and intended to succour the oppressed and punish the oppressor was having in most cases the opposite effect. But the pope bore the greatest guilt because he did little, in Bernard's eyes, to punish or thwart the behaviour, and nothing to relieve the sufferer. A lawful appeal was made only when one was rightly injured, and even then only from a court of decision. In its current form, rather, the antidote had been turned into a poison; and as a result, bishops everywhere were constantly appealed against so that they were completely unable to combat and correct sin and crimes, or even maintain the standards and discipline of their own clergy.[2]

Bernard even anticipated Eugene's protest, that those who had been wrongly appealed against had the right to come and 'demonstrate their innocence and overcome malice.' To this, Bernard gave the typical response of his day: the just did not wish to be troubled needlessly. For, 'in the curia there are those who readily favour the appellants and foster appeals.' Thus, as it was said, 'if you are going to lose in Rome, you might as well lose at home.' Bernard further could remember none who had ever 'reimbursed the money for the expense of the journey to the person against whom he had appealed. It is certainly marvellous that all of the appellants have been found just and the defendants found guilty by your examiners.' Ultimately, the pope was advised simply to refuse judgement on appeals, or at least to refuse protection to them, and to 'return many of these problems to men who are acquainted with them, or who can more quickly become acquainted with them.' How very obliging of the protector of justice, he mocked the pope, 'to spare in this way the

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[1] On this, see, S. Chodorow, *Dishonest Litigation*, 187-91, 197, 201 n. 12-13, 205 n. 60; J. Sayers, *Judges Delegate*, 54-99; C.R. Cheney, *Becket*, 63-70; I.S. Robinson, *Papacy*, 194-98; I.S. Robinson, '*Periculosus homo*: Pope Gregory VII and Episcopal Authority,' *Viator* 9 (1978), 103-31, here at, 128-29; *The Letters of John of Salisbury* 1, xxxv; J.R.H. Moorman, *Church Life*, 236; J.C. Moore, *Innocent III*, 295-306, esp. 296 and n. 5, 301. Cf., *Die Dekretalen Gregors VIII.*, 122-23.

[2] *De consideratione*, Bk. 3. II. 6-8 (85-88).

labours, and expenses of so many people.'[1] In this, again, Bernard clearly anticipated the implementation of the system of judges delegate, already, however, fully underway. What is significant, however, is that he specifically recommended delegation as a tool against abuse.

'Gratian,' whom S. Chodorow associated with Bernard's 'reform' ideology,[2] had in fact already collected numerous texts defining and protecting the right of appeal to the pope.[3] But, to Bernard's credit, the *Decretum* was remiss in foreseeing all of the means by which petitioners would 'dishonestly' use the juridical system. Indeed, 'Gratian I' only treated the problem of dishonest litigants by adducing certain canons cursorily and vaguely proscribing frustratory appeals of delays as well as certain second appeals—the *dictum* on letters obtained *falsa suggestione* was not included in 'Gratian I's' original recension.[4] And while he did prescribe time-limits and punishment for offenders, as well as stipulations regarding *sequester* of *possessionis fructus* in the case of an appeal of a judgement, as well as proscriptions against appeal from commonly chosen arbiters,[5] his broad prescriptions in most cases, especially concerning frustratory appeals, lacked any technical regard for procedures of detection and prevention. According to Chodorow, 'Gratian' could not foresee the prodigious future extent of the use of the appellate procedure, and accordingly did not deal with most of the problems that could and did arise. As a result, Alexander III would receive many requests for instructions on appeals, rendering him the great legislator on the subject, and resulting in attempts to clarify the general law concerning appeals, while combating their fraudulent or frivolous use.[6] Nevertheless, and despite Bernard's sustained harangue, attempts to combat such abuse did not begin with Alexander III.

It has been pointed out, in fact, that vague attempts at combating frustratory or frivolous appeals began as early as the 1140s and 1150s, when popes began to endeavour to prevent second and third appeals by occasionally inserting in letters to judges in the provinces a clause forbidding further appeal, or ordering judges to hear and terminate a cause notwithstanding appeal: *appellatione remota* would eventually become the standard formula. These early efforts, however, and the sudden need for such as Bernard made clear, have perhaps not been sufficiently appreciated; although it was primarily through such indirect indications that evidence for appeal abuse manifested itself in the papal letters of the period 1143-53. Thus, while no type of clause proscribing the right of further appeal *per se* occurred in any of the documents of Innocent II contained in the *Patrologia latina*, various such clauses did in fact occur in numerous papal letters

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[1] *De consideratione*, Bk. 3. II. 8-12 (88-93).
[2] See, S. Chodorow, *Gratian*, esp. 17-64, 247-50.
[3] See, ch. 1.3.
[4] Gratian, *Decretum*, C. 25 q. 2 d. p. c. 16; see, A. Winroth, Decretum, 221.
[5] See, e.g., Gratian, *Decretum*, C. 2 q. 6, esp. dd. p. cc. 10, 14, 21, cc. 22, 24-27, d. p. c. 27, c. 28, d. p. c. 32, c. 33, d. p. c. 33, c. 34, dd. p. cc. 36, 38, c. 39, d. p. c. 39, c. 40; see also, A. Winroth, Decretum, 207; S. Chodorow, *Dishonest Litigation*, n. 11.
[6] S. Chodorow, *Dishonest Litigation*, 189-98.

from the decade following his death: *remota* [*omni*] *appellatione*;[1] *omni appellatione et occasio*[2] *seposita*;[3] *nec appellationis nec suffragii cujuslibet interventu*;[4] *absque subterfugio appellationis*;[5] *sine appellationis remedio*.[6] Without explicitly proscribing further 'appeal,' potential frustratory measures or *subterfugium* were also addressed through various other clauses, whether or not specifically in the context of a second appeal: *dilatione remota* or *seposita*,[7] *omni occasione remota* or *seposita*,[8] or simply the mandate to act 'without delay.'[9] Nevertheless, historians who have considered the subject have concluded that the *appellatione remota* measure was by and large a failure, proving a 'poor guarantee of finality' by leaving still considerable room for second or further appeals even when the stipulation had been enacted in a commission. For instance, even if

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[1] *PL*, Eugene III, no. 11, 36, 37, 329; *Decretales*, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506); PUE2, no. 64 (JL, 9433), 72 (JL, 9611); PUS2, no. 68; *EPRI*, no. 213 (JL, 9733) (*remota omni seposita*); PU in Piemont, no. 4 (*IP* 6/2, 14/28); also, *PL*, Eugene III, no. 494 ('because in such cases certain men are wont to thwart canonical vengeance with the refuge of appeal, to the fomentation of their wickedness [*malitia*]').

[2] The term *occasio* itself had diverse usages; J.F. Niermeyer, *Lexicon*, offered, e.g., 'cause, reason, account, circumstance, pretext, subterfuge, evasion, refusal, resistance, impediment, etc.'

[3] *PL*, Eugene III, no. 517, 518, 519.

[4] *PL*, Eugene III, no. 495.

[5] *IP* 7/2, *104/4; *IP* 6/1, *76/10 (JL, 8471); *APRI* 2, no. 380 (JL, 8632); PUN, no. 50; PUS2, no. 67; PU in Pisa, no. 2 (*IP* 5, 61/204).

[6] *PL*, Eugene III, no. 149, 488; PUE3, no. 90; PUF2, no. 70.

[7] *PL*, Lucius II, no. 11, 89 (*occasione dilationis remota*); *PL*, Eugene III, no. 34, 255 (*frustratoria dilatione remota*), 431 (*diligenti studio mora postposita*), 569; PUS2, no. 57, 60 (JL, 9258) (*remota frustratoria dilatione et tergiversatione*); PUF5, no. 60 (*occasio et dilatione remota*), 69 (JL, 8823) (*omni occasione et dilatione remota*).

[8] *PL*, Eugene III, no. 168, 169, 462, 521, 557, 569; JL, 9149 (complete text) (*PL*, Eugene III, no. 232); *IP* 5, *61/207; *IP* 6/1, *361/22; *APRI* 3, no. 75 (JL, 8898); PUTJ1, no. 15; PU in Pisa, no. 2 (*IP* 5, 61/204).

[9] *PL*, Celestine II, no. 25 (*minime differatis*); *PL*, Eugene III, no. 38, 39, 60 (*quantum hoc mandatum nostrum adimplere distuleris, tantum ab omni officio episcopali abstineas*), 270, 429, 488 (*longa dilatione*), 504; *IP* 7/1, *338/36; *Decretales*, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506); PUF2, no. 19; PUN, no. 50; PUF9, no. 42; *APRI* 2, no. 385 (JL, 8695); Urkunden zur Geschichte von Farfa, 177-78, no. 1 (*IP* 2, 68/52); Nachträge zu den PU in Italiens 5, no. 10 (*IP* 5, 477/26); Archives historiques du Poitou 3, 20, no. 14 (JL, 9314) (*nolumus fratres ipsius versutis dilationibus iuris sui aliquod sustinere dispendium...omni subterfugio et dilatione cessante*), 20, no. 15 (JL, 9315) (*sine diffugio*); *EPRI*, no. 206 (JL, 9595) (*non differas*); *EPRI*, no. 211 (JL, 9705) (*apostolicae sedis presentiam tuam non differas exhibere*); also, *APRI* 1, no. 228 (JL, 9665) (*omni subterfugio cessante*). See also, for the incidence of the term 'fraud,' *APRI* 2, no. 396 (JL, 9396); *APRI* 3, no. 80 (*IP* 6/1, 254/13; JL, 8960) (*testimonio fraude*); PUF2, no. 27; Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45); *LC*, 382-83, no. 92 (Theiner 1, 14-15, no. 18; *Antiquitates* 3, 777-78; *IP* 1, 187/5). For the papal concern for 'defrauding (*defraudare*),' see, *PL*, Eugene III, no. 244, 308, 452, 524, 559, 569; *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14); *APRI* 3, no. 114 (JL, 9732). See also, for instances of or the possible suggestion of dishonest litigation: PUF2, no. 70 (*suggestione falsa*); PUE2, no. 64 (JL, 9433) (*falsum crimen*); *PL*, Lucius II, no. 40; *PL*, Eugene III, no. 2, 6, 11, 13, 36, 37, 101, 152, 314, 322, 329, 358, 370, 372, 373, 450, 487, 494, 495, 517; JL, 8920, 9297b; *IP* 4, *71/26; *IP* 6/1, *252/3-5, *253/6-8, *254/10, *254/12; *EPRI*, no. 192 (JL, 8833), 207 (JL, 9632), 213 (JL, 9733); PUE2, no. 71 (JL, 9591), 72 (JL, 9611); *APRI* 2, no. 380 (JL, 8632); *APRI* 3, no. 73 (JL, 8898), 75 (JL, 8916); PUF5, no. 59, 69, 73; PUE3, no. 47, 48, 62; PUF6, no. 61; PUS1, no. 59; PUS2, no. 47, 48, 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934), 67; PUN, no. 59; PUF1, Nach. Gott., no. 31 (JL, 8832); Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256), 20 (*IP* 8, 180/260), 21 (*IP* 8, 181/261); *Collectio Alani*, Bk. 2. XVIII. 4 (Appendix 87), 261 (Kanonistische Ergänzungen zur *Italia pontificia*, no. 84; S. Chodorow, *Dishonest Litigation*, n. 38).

the clause was unqualified, a party could still take exception to the judges or raise a side issue upon which he would then appeal. A party could also plead a papal privilege which countermanded the effect of the clause under certain circumstances. Such shifts, concluded C.R. Cheney, 'knocked the bottom out of the clause *appellatione remota*.' Ultimately, he concluded, popes could do little in the face of frivolous appeals.[1] And clearly, given the legislation of every pope of the second half of the century onwards from Alexander III, the abuse or nuisance of frivolous and second appeals continued.[2]

Another measure of legislation which would ultimately be introduced to combat appeal abuse imposed time limits within which period a litigant would have to appeal; this was instituted by Alexander III both in the decretal letter *Cum sacrosancta Romana ecclesia*[3] and in canon six of the Third Lateran Council:[4] the limit was one year, two given 'urgent and evident necessity,' within which an appeal had to be prosecuted.[5] There is considerable evidence, however, that some type of temporal restriction on appeals was already being employed in the 1140s, as in a great many cases letters either stipulated or referred to a previous enactment of time *termini* within which the parties were expected to appear or proceed. At the end of April 1145, for instance, Eugene III informed the bishop of Arras of a case, 'with regard to which, the other party, feeling itself to be aggrieved, has appealed to the apostolic see, and with a terminus having been enacted...has sent its representative to our presence.'[6] And nearly a year later the same pope would reprove the archbishop of Reims: 'Also, with a terminus of appeal having been enacted, you neither came nor destined to our presence answerable representatives who might have responded for your sake.'[7] Similarly, in the same conciliar canon, Alexander III also imposed penalties on negligent or evasive

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[1] Thus, if a religious house had obtained a letter relieving them from answering claims to tithes and various properties which had been the subject of papal grants, an opponent could presumably circumvent this safeguard by impugning on however frivolous grounds the grants' own authenticity. C.R. Cheney, *Becket*, 63-64.

[2] See, S. Chodorow, *Dishonest Litigation*, 188-98 and 201 n. 12-13; C.R. Cheney, *Becket*, 64-71; I.S. Robinson, *Papacy*, 194-97; A. Morey and C.N.L. Brooke, *Foliot and Letters*, 238f.; *The Letters of John of Salisbury* 1, xxxv; G.G. Pavloff, *Papal Judge Delegates at the Time of the* Corpus iuris canonici (Washington D.C., 1963), 24-29, 53; J.C. Moore, *Innocent III*, 296 n. 5; J. Sayers, *Judges Delegate*, 81. Of the seventy-three chapters included under the title 'concerning appeals' in the *Decretales* of Gregory IX, thirty-five were decretals of Alexander III; compared to Innocent III's nineteen; see *Decretales*, Gregory IX, Bk. 2. XXVIII. As I.S. Robinson, *Papacy*, 195, aptly noted: 'In the Becket dispute Alexander III had been the champion of the right of the oppressed to appeal to the papacy. His clarification of the law concerning appeals, as it survives in the *Decretales* and in the sixth decree of the Third Lateran Council, reveals a quite different preoccupation.'

[3] *PL*, Alexander III, no. 898, col. 802-03 (*Decretales*, Gregory IX, Bk. 2. XXVIII. 5-7; JL, 12,020); see, *Decretales*, Gregory IX, Bk. 2. XXVIII. 33 (JL, 13,876).

[4] Ecumenical Councils 1, 211-25 (Mansi 22, 212-33; JL 2, 340-41), Third Lateran Council, c. 6 (here at, 214).

[5] See, for the further legislation of Celestine III and Innocent III on the subject, *Compilatio secunda*, Bk. 2. XIX. 9 (JL, 17,648); *Decretales*, Gregory IX, Bk. 2. XXV. 4.

[6] *PL*, Eugene III, no. 11.

[7] *PL*, Eugene III, no. 101.

appellants condemning them to pay their opponents' expenses.[1] And again this does not appear to have been a great innovation on the part of this one great legislator, who had in fact cut his teeth as a curial novice under Eugene III. Rather, there is evidence that as early as the pontificate of Innocent II the curia had experimented with some form of expense penalty which was occasionally imposed or re-imposed after 1144.

Thus, in March 1145 Eugene III wrote to the provost, archdeacon, and chapter of Liège that Innocent II, on account of violent injuries inflicted upon a monk of St. Augustin, Géronsart by the former abbot of Flône, 'now truly an apostate,' had ordered the former abbot to restore to the same monk within forty days the church of Herpen and other properties pertaining to the church of St. Augustin, 'and to repay without delay the expenses which he had incurred coming to and going from the apostolic see.' However, as the same former abbot was refusing to comply with the mandate of Innocent II, Eugene re-ordered the clergy of the cathedral of Liège, 'with the subterfuge of appeal having been removed, to expel the same apostate and his own men from the church of Herpen without delay and restore it to the same John with all of its appurtenances. And also, cause to be restored entirely to him the expenses and all which have been seized by the same [former abbot].'[2] Only days later Eugene wrote in another letter to the bishop of Arras concerning his controversy with a certain priest over money which the priest's brother had 'furtively' stolen from him and which the bishop was subsequently demanding back. Informing the bishop that he was diligently attending to the cause both through the attestation of the letters of his chapter and through the recent relation of his own representatives, the pope stipulated: 'Therefore, having heard the account of both parties and studiously inspected the writings, we have adjudicated from the counsel of our brothers that the same priest, with his honour and order saved, should restore to you the same money, just as he has sworn, and truly you, because you appealed the same priest to the apostolic see without grave cause (*absque gravamen*), should restore to him the reasonable expenses of the way.'[3] Eugene or his chancellor ordered this same type of restitution to be made on at least three or four other occasions.[4]

Similarly, in canon six of the Third Lateran Council Alexander III forbid appeal of a monk or canon, living under a rule, against the regular discipline of his prelate and chapter.[5] In an undated letter, however, Eugene III again had already written to the monks of Fleury (St. Benoît-sur-Loire) that Lucius II—hearing that 'through the lack of care and negligence of the pastor' their

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[1] Ecumenical Councils 1, 211-25 (Mansi 22, 212-33; JL 2, 340-41), Third Lateran Council, c. 6 (here at, 214).
[2] PUN, no. 50.
[3] *PL*, Eugene III, no. 6.
[4] See, *PL*, Eugene III, no. 25, 334; PUE3, no. 47, 48.
[5] Ecumenical Councils 1, 211-25 (Mansi 22, 212-33; JL 2, 340-41), Third Lateran Council, c. 6 (here at, 214); see, S. Chodorow, *Dishonest Litigation*, 189-91, 205 n. 60; I.S. Robinson, *Papacy*, 196; C.R. Cheney, *Becket*, 64, 70; J. Sayers, *Judges Delegate*, 81.

house had 'both become lax in religion and has been diminished as much in temporalities as in spiritualities'—had substituted 'with the counsel of religious and discreet men' another in his place, whom he thereby ordered by letter 'to labour with all solicitude for the purpose of the reformation of the religion and the recuperation of the possessions, which have been illicitly distracted. And although he would have been willing to give that up to effect, some of your number, not judging rightly and not fearing to place necks under the monastic discipline, have endeavoured to disturb such a great good and are appealing to the apostolic see against their rule and profession.'[1] In sum, it seems clear that by the mid-twelfth century the curia was already dealing with problems of appeal abuse; though, by and large, as compared to the total papal record, these problems had not become critical: those cases which clearly appear to have involved out and out abuse of the appellate system or protracted evasion, or any form of dishonest litigation for that matter, especially cases of overt fraud, as far as the papal record itself indicates, represent only a modest portion of the total. Yet, problems or concerns were real enough that, even before Bernard of Clairvaux had begun to put his pen to the first chapters of the *De consideratione*, Eugene III and the curia were devising and implementing methods, which would eventually become enshrined in canon law, to combat manipulation of the system of appeals—although none of Eugene's letters would actually enter the decretal tradition on the subject. In any event, the tide of appeals coming to Rome did not seriously ebb, while the problem of abuse would appear to have continued or grown so that it would require the legislative activities of successive popes.

6.4 RESISTANCE

The line between dishonest litigation and contumacy, or resistance, could often times seem slight. And it is clear that, in judicial procedure, the rights and mandates of the papal curia were not universally honoured, underscoring perhaps the most significant drawback or limitation of the papal system: its means of enforcement. Part of the problem was logistical: the mere difficulty of executing sentences and enforcing authority at great distances. And in this way, outright contumacy was often preceded by simple contempt or avoidance of summons, a more direct form of evasion. As far as the papal letters of 1143-53 suggested, resistance to papal mandates and decisions was not entirely uncommon, at least insofar as it was almost certainly a greater problem for the curia than the problems of appeal abuse and other forms of dishonest litigation, and exposed in that event the potentially fragile veneer of papal authority and primacy. In fact, in a certain regard, resistance was a real and everyday fact of papal government, insofar as the 'vicar of Christ' was mostly shut out from his own episcopal see for most of this period. As K. Pennington

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[1] *EPRI*, nc. 207 (JL, 9632).

observed, if even by 1300 the pope could demand recognition of his *plenitudo potestatis*, of his supreme ecclesiastical jurisdiction, 'in spite of the rhetorical grandeur that enveloped papal monarchy, there was frequently a discrepancy between theory and practice.'[1]

In this way, in the middle decades of the twelfth century, the curia would occasionally feel compelled to open its letters with ardent and peremptory remonstrations and threats:[2] 'Just as devout and humble sons ought to be sweetly favoured with embraces of true charity and full hearts of piety, so the ungrateful and rebels and those persisting in their contumacy should be harshly handled with the severer rigour of justice.'[3] 'It is excessively offensive to resist the mandates of

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[1] K. Pennington, *Papal Monarchy*, 115-16; see also, R. Brentano, 'Localism and Longevity: The Example of the Chapter of Rieti in the Thirteenth and Fourteenth Centuries,' *Law, Church, and Society: Essays in Honor of Stephan Kuttner*, ed. K. Pennington and R. Somerville (Pennsylvania, 1977), 293-310, here at, 307-08, describing a case in the thirteenth century of the canons of Rieti, a border town of the Patrimony, successfully resisting papal provisions. On this in general, see also, K. Pennington, *Papal Monarchy*, 23, 31, 133-34, 175; C.R. Cheney, *Innocent III and England*, 113-14, 117-18; C.R. Cheney, *Becket*, 74-75; J. Sayers, *Judges Delegate*, 239-68; B. Tierney, *Foundations*, 28-29.

[2] For examples of *arengae* dealing with resistance, see, Appendix 1, no. 99, 100, 101 (see also, PUE1, no. 54; PUF2, no. 41), 168, 224, 229, 232, 241, 265, 271, 295, 296. For papal forgiveness of resistance, disobedience, or contumacy through papal mercy or kindness, see, Appendix 1, no. 100, 101, 103, 295; see also, Appendix 1, no. 6, 243. For the occurrence of papal or apostolic 'mercy/clemency (*clementia*),' generally, see, Appendix 1, no. 37, 39, 40, 43, 48, 63, 101, 123, 295; see also, Appendix 1, no. 6, 35, 60, 61, 94, 100, 101, 103, 108, 110, 123, 175, 179, 183, 208, 218, 220, 229, 243. For 'obedience' in the letters generally, see, e.g., *PL*, Celestine II, no. 2, 35; *PL*, Lucius II, no. 19, 36, 37, 40, 41, 43, 59, 61, 86, 89; *PL*, Eugene III, no. 18, 22, 25, 35, 91, 93, 96, 105, 146, 150, 152, 166, 175, 186, 201, 203, 221, 227, 239, 245, 253, 254, 256 (*IP* 7/1, 339/42; JL, 9189), 264, 284, 289, 296, 308, 311, 322, 323, 324, 340, 342, 344, 347, 351, 352, 353, 355, 358, 361, 364, 370, 371, 376, 391, 393, 399, 403, 413, 434, 447, 450, 465, 467, 468, 474, 482, 491, 499, 504, 507, 514, 517, 519, 520, 523 (Otto of Freising, *Gesta*, 120-22; JL, 9605), 532, 537, 542, 551, 560, 561, 562, 566, 569, 572, 577, 588, 589; JL, 8639 (P-H *Iter*, 236); *IP* 2, *95/42; *IP* 5, *122/5, *60/203, *60/201; *IP* 6/1, 78/17; *IP* 6/2, *379/22; *IP* 7/1, *338/36; *HP*, 45-46 (JL, 9287, 9288, 9289); *APRI* 1, no. 227 (JL, 9672); *APRI* 2, no. 386 (JL, 8753), 396 (JL, 9396), 400 (JL, 9564); *APRI* 3, no. 71 (JL, 8830); *EPRI*, no. 187 (JL, 8547), 190 (JL, 8612), 196 (JL, 8897), 200 (JL, 9079), 207 (JL, 9632); PUE3, no. 47; PUE1, no. 49, 54; PUE2, no. 33, 36 (JL, 8625), 50 (JL, 8863), 75; PUF2, no. 41; PUF1, no. 53, 54; PUF8, no. 31; PUF1, Nach. Gott., no. 36; PUF5, Nach. Gott., no. 22 (JL, 8884); PUF7, Nach. Gott., no. 30, 36; PUS1, no. 57, 61; PUS2, no. 47, 56 (JL, 8934), 66, 67; PUP, no. 51, 52; PUKHL, no. 50 (*RRH*, no. 214; JL, 8472a); Ältere PU in den päpstlichen Registern 3, no. 2; PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); PU in Pisa, no. 5 (*IP* 5, 63/214); PU in Florenz, no. 10 (*IP* 3, 122/18); Nachträge zu den PU in Italiens 2, no. 9 (*IP* 3, 179/15; JL, 8497); Varietà, 400-03, no. 1 (*IP* 1, 173/3; JL, 9604); Archives de l'Orient latin 2, 253, no. 1 (JL, 9165); Glanfeuil Forgeries, Appendix, 251, no. 10 (*IP* 8, 180/257). For 'disobedience' in the letters generally, see, e.g., *PL*, Celestine II, no. 15, 44; *PL*, Lucius II, no. 41; *PL*, Eugene III, no. 81, 96, 105, 114, 127, 134, 201, 289, 303, 323, 351, 353, 366, 367, 537; *IP* 6/1, *253/7; *APRI* 3, no. 80 (*IP* 6/1, 254/13; JL, 8960); PUE1, no. 50 (*HP*, 88; JL, 9513), 54; PUF2, no. 33; PUF7, Nach. Gott., no. 28, 36; PUN, no. 54; PUS1, no. 62; PUS2, no. 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934); PUP, no. 45; Glanfeuil Forgeries, Appendix, 251, no. 10 (*IP* 8, 180/257); PU in Florenz, no. 14 (*IP* 3, 138/15). For 'mercy' or *clementia* in the letters generally, see, *PL*, Celestine II, no. 2, 16; *PL*, Lucius II, no. 36, 37; *PL*, Eugene III, no. 21, 47, 60, 62, 65, 81, 101, 114, 174, 195, 203, 241, 245, 256 (*IP* 7/1, 339/42; JL, 9189), 264, 271, 296, 308, 319, 352, 354 (Otto of Freising, *Gesta*, 106-08; JL, 9344), 357, 367, 370, 371, 382, 399, 400, 413, 447, 453, 461, 465, 466, 467, 480, 482, 548, 560, 570/71, 572; *APRI* 1, no. 211 (JL, 9074); *APRI* 2, no. 391 (JL, 8784), 400 (JL, 9564); *APRI* 3, no. 80 (*IP* 6/1, 254/13; JL, 8960); *EPRI*, no. 205 (JL, 9530); PUE3, no. 70; PUE2, no. 56; PUF2, no. 36, 37, 41, 61 (JL, 9437); PUF8, no. 19 (JL, 8487), 31; PUF6, Nach. Gott., no. 15; PUF7, Nach. Gott., no. 28, 32; PUP, no. 41; PUS1, no. 53 (JL, 8546), 54 (JL, 8928), 57, 61, 62; PUS2, no. 56 (JL, 8934); PUTJ1, no. 13; PU in Nonantola, no. 3 (*IP* 7/1, 298/1; P-H *Iter*, 238; JL, 8701); *Historia monasterii S. Augustini Cantuariensis*, 402, no. 30 (JL, 9537); Nachträge zu den PU in Italiens 9, no. 5 (*IP* 7/1, 298/2; JL, 8737).

[3] Appendix 1, no. 99 (PUF7, Nach. Gott., no. 36).

the apostolic see with shameless boldness, and to be willing to revoke and abrogate its constitutions.'[1] Even the legate cardinal-bishops Alberic of Ostia and Imar of Tusculum could write: 'To act against apostolic mandates is clearly proven, through the manifest accounts (*rationes*) of the canons, to be equivalent to sacrilege.'[2] In fact, the papal letters generally were filled with all kinds of threats, especially in the anathema clauses or eschatols. But such statements, especially the rhetorical and presumably generalised *arenga* statements, almost never occurred as spontaneous expressions or declarations of papal primacy, but in the face of opposition to it. In the face of such resistance to papal mandates, according to C.R. Cheney, there was danger that the judicial system would be maintained merely as a matter of principle, and 'not for the benefits it conferred on deserving litigants.'[3] In fact, there were only rare instances in the letters of 1143-53 of judgement clearly being awarded solely on the basis of contempt, while even in those cases the offending party was generally given more than ample deferments, and presented multiple summonses, and judgement was awarded only as a result of gross contempt or contumacy. Nevertheless, such gross contempt and contumacy did demonstrate to what extent papal authority could be flouted.

In his *De consideratione*, Bernard of Clairvaux admonished the pope 'to see whether...your apostolic decrees and regulations concerning them are observed with fitting diligence so that there is nothing in the field of the Lord which is left uncultivated out of neglect or uprooted by deceit.' For, 'even if I exclude the many, in fact innumerable, instances of neglect present everywhere, I can easily point out some endeavours, even among those planted by your right hand, which have been repudiated.' He pointed out that the laws which Eugene had promulgated at the Council of Reims with his 'own mouth' had gone unobserved.[4] More importantly, Bernard saw that the abuse of the papal appellate and judicial systems to which the pope had given free rein only induced contempt of those systems throughout the Church; and accordingly, they should 'be more bitterly censured since they are more harmful.' For, 'many have even abandoned their own rights so as to defer in such cases and thereby not be worn out by a long and fruitless journey. Still, many have not tolerated the loss of what was theirs and have dangerously scorned unjust appeals and celebrated names.' Innumerable examples, Bernard continued, made clear that 'abuse is not born from contempt, but contempt from abuse.' If the pope removed abuse, contempt would have no excuse—except that, in Bernard's eyes, abuse was inherent in the papal systems.[5] Nevertheless, the curia was not prepared to dismantle or even seriously curtail the right of appeal. As a result, by

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[1] Appendix 1, no. 271 (*PL*, Eugene III, no. 579).
[2] Appendix 1, no. 265 (PUF2, no. 24).
[3] C.R. Cheney, *Becket*, 74-75.
[4] *De consideratione*, Bk. 3. V. 19-20 (104-05). For the canons of the council, see, Mansi 21, 713-18 (JL 2, 52-53; *Decretales*, Gregory IX, Bk. 2. I. 2, for c. 5), Council of Reims, cc. 1-18.
[5] *De consideratione*, Bk. 3. V. 10-12 (90-93).

Bernard's line of thinking, contempt and resistance would continue to be real problems with which the curia would have to contend; and the pope himself found occasion to equate disobedience to its authority with the work of no less than the devil himself. Thus, Eugene III reproved the abbot of St. Augustine, Canterbury in early 1149:

> The ancient enemy of the human race does not rest to wait in ambush with accustomed wickedness for those who acknowledge themselves disciples of Christ with public acts, but labours with assiduous cunning so that he might beguile those serving in any respect whatsoever the souls of the Creator of all things, and bring them into a hatred of the Creator. With whose suggestion, although you would humbly receive and hold the sentence of interdict which...the archbishop of Canterbury...has promulgated from our mandate, nevertheless, your brothers, having put aside consideration of the monastic discipline, just as in truth we have learned, are celebrating the divine offices.[1]

In certain instances, especially with regards to houses at greater distances from Rome, a singular act of disobedience could be sustained for a great duration. Thus, at some point in his pontificate Eugene wrote to the bishop and clerics of Exeter, informing them that his curia was aware from the rescripts of the letters of Paschal II, Calixtus II, and Innocent II just how often they had instructed their predecessors as well as themselves 'to bless and concede to the monks of the monastery of St. Martin de Bello in the city of Exeter, soldiering for the Lord in the church of St. Nicholas, their own cemetery and burial rights.' But as 'it has not yet been given up to effect,' he exclaimed, 'we are greatly amazed over such great disobedience. For, it is both entirely contrary to the episcopal office and most deserving of a grave punishment to have resisted the orders of the apostolic see with shameless boldness for so great a time. For, Blessed Gregory says that: "He ought to be humbled with the pain of his own ruin, whoever contemns to obey apostolic orders."' Accordingly, 'lest the orders of such great men should remain longer without the desired effect,' the pope ordered the bishop and clerics to concede to the same monks and bless within forty days of receipt of the present writing, 'just as it had been ordered by our aforesaid predecessors,' their own cemetery hard by their monastery. Otherwise, he would prohibit the divine offices to be celebrated in the church of Exeter, and interdict burial for its clerics who should 'refuse to work with piety toward such a resolution.'[2]

In April 1148 the pope wrote to the bishop of Zaragoza ordering him to restore to the archbishop of Auch the church of Alagon, which his predecessor at Zaragoza had 'violently stolen' even though it had been donated by the king of the Aragon and confirmed by Innocent II with 'the muniments of his own writings.'[3] In February 1151 the pope wrote back to the bishop of Zaragoza assailing him because, although 'on account of your pride, on account of which you have not been willing to obey apostolic orders concerning the controversy which has been prosecuted a long while between you...and the bishop of Pamplona, you have incurred already a sentence of

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[1] Appendix 1, no. 224 (*PL*, Eugene III, no. 337).
[2] PUE1, no. 54.
[3] PUF7, Nach. Gott., no. 35.

suspension, you have by no means desisted in your rebellion on account of this and have proved unwilling to effect the restitution of the church of Alagon, just as we have ordered you through apostolic writings, for...the archbishop of Auch, apostolic legate.' Therefore, because the same archbishop had complained 'that he has been despoiled through violence without reason or a judgement, as he has long and quietly possessed it and [Innocent II] confirmed it for him with the muniments of his own privilege,' the pope re-ordered the bishop to restore the church without opposition or stratagem (*refragatio*). Nevertheless, the mandate offered judicial recourse, closing: 'Truly, afterwards, if you trust that you possess any justice in these things, you, solicitously attending in our presence or that of a legate of the apostolic see, will be able to obtain that which will have been just.' In fact, such recourse, offered under the face of equity, was not uncommon in such mandates of the period.[1] In this case, however, an additional warning was included: 'if you should be disobedient to our orders in this, when you should wish to obtain absolution from us, we, with the aid of the Lord, will not be unmindful of this second excess.'[2]

Such sustained contempt however was not simply a problem related to propinquity. Thus, beginning under Lucius II a suit between the monastery of Ceredo and the bishop of Lodi over the *curia* of Piazanno was appealed to the curia. The case itself was quite complicated and is difficult to unravel. It had possibly originally been appealed from the metropolitan's court—it is not entirely clear in this event if the archbishop had in fact been delegated the cause by the pope—to the court of Lucius II, who then apparently delegated it to the bishop of Novara, from whom it was re-appealed to Lucius II, who, having re-initiated proceedings, meanwhile died. The case continued nonetheless under Eugene, and persisted through 1146: the bishop of Lodi, who was somehow being accused of trying fraudulently to use a writing or sentence of the metropolitan's court, ignored three different papal summonses to come to court and was eventually suspended from office—despite the fact that his see itself lay less than 500 kilometres from the seat of the curia, which was in fact either around Rome or north at Viterbo throughout this time. At length, only the bishop came 'on account of his wickedness and that of his clerics, but over the same controversy he was willing neither to plead nor respond with a judicial order.' Still, the pope was lenient: 'although we are capable of passing a severe sentence on account of such manifest iniquity against him from the rigour of justice, nevertheless, from the mercy of the apostolic see we then supported him.' Eugene, therefore, ordered the bishop *vive voce* to appear before him on 1 November 1146, then being imminent, prepared to plead and respond over the same controversy. If

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[1] See, similarly, for judicial recourse offered to contumacious parties: *PL*, Celestine II, no. 3, 4, 44; *PL*, Lucius II, no. 11; *PL*, Eugene III, no. 38, 39, 149, 150, 384, 398, 399, 400, 401, 412, 505, 521, 569; *APRI* 3, no. 55 (JL, 8516); PUS2, no. 67; PUF9, no. 42; PUE3, no. 58; PUF7, Nach. Gott., no. 35; Nachträge zu den PU in Italiens 4, no. 8 (*IP* 5, 196/4). In most instances, recourse to a judge delegate was stipulated instead of the papal presence.

[2] PUF7, Nach. Gott., no. 36.

he would not show, the pope would then refuse to admit his voice further in the cause and absolve the monastery entirely from the bishop's claim in the matter. Thus, despite suspension from office, the pope allowed the bishop the opportunity to continue pleading in the cause. Ultimately, however, on that terminus and for a further twenty-five days, it was noted, neither the bishop 'nor anyone on behalf of the church of Lodi came nor sent any excuse as a pretext;' rather, the bishop 'contumaciously and wickedly absented himself.' Accordingly, Eugene awarded in favour of the monks, 'not allowing [the bishop's] contumacy to go further unpunished.'[1]

Such resistance could occur even at the lower levels of the ecclesiastical hierarchy. Thus, following up a controversy begun several years earlier under Innocent II between the provost of the church of Prato and the parish of S. Giusto, Celestine II wrote to an abbot, prior, and five parish priests of the region, including the parish-priest of S. Giusto, ordering them neither 'to receive the tithes or offerings or public penance of the parishioners of the church of Prato, nor presume to introduce yourselves concerning those things which pertain to the rights of the parochial *plebs* itself.'[2] On the same day another letter was sent out to 'the provost and his brethren, the consuls, and the populace of Prato,' informing them that their bishop had been ordered by the pope in person 'to observe firmly and cause to be observed the sentence which has been given by [Innocent II] and affirmed with his own writing over the controversy prosecuted a long while between you and the parish-priest of S. Giusto.'[3] Three months later Lucius II would have to write to the priest of S. Giusto directly that he had received the complaint of the provost of Prato and his brethren that he had continued to violate entirely the sentence of Innocent II as well as the orders of Celestine II. Accordingly, the new pope ordered him to desist in such direct violation of papal orders, 'otherwise we shall not be able to allow it to pass by, rather we must thereupon administer justice.'[4] Nevertheless, nearly three years later Eugene III would write to the provost of Prato and his brethren informing them that he, in compliance with their complaint, had summoned the parish priest of S. Giusto to his presence and put him to an account. The priest, however, as he was unable to put forth any sufficient defence, was duly ordered *viva voce* and 'in common audience' to observe further and without contradiction the sentence of Innocent II—'if the clamour should again come back to us,' the pope added, 'we will not let pass unpunished his first and second acts of disobedience.'[5]

Appeals to Rome, as Bernard of Clairvaux reminded the pope, were also liable to be contemned. The law however was extremely obscure on the matter of judges delegate and ordinaries who would not halt their proceedings when a party appealed to Rome, and thus gave

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[1] *APRI* 3, no. 80 (*IP* 6/1, 254/13; JL, 8960); see, JL, 8920; *APRI* 3, no. 73 (JL, 8898); also, *IP* 6/1, 252-54.
[2] PU in Florenz, no. 11 (*IP* 3, 138/11).
[3] PU in Florenz, no. 10 (*IP* 3, 122/18).
[4] PU in Florenz, no. 12 (*IP* 3, 138/12).
[5] PU in Florenz, no. 14 (*IP* 3, 138/15); see also, *IP* 3, *122/17, *138/13, *138/14.

scope both to misunderstanding and fraud. According to C.R. Cheney, as late as the early thirteenth century English prelates were frequently condemned by the papacy for such an offence, which was treated as an act of direct defiance. Innocent III, Cheney maintained, virtually exonerated several appellants from sentences delivered in an inferior court after appeal 'without broaching the substantive issue.'[1] The extant papal letters of 1143-53, however, reported explicitly no instances of judges issuing sentences after appeal,[2] with only seven cases or accusations of parties themselves acting or proceeding illegally after an appeal.[3] And despite this meagre evidence, in nearly every one of these cases the pope was not prepared to issue judgements or penalties outright or even discontinue proceedings on the basis of some party's action taken after appeal, or an accusation thereof, in part because the pope had to respond to accusations of such appeal violations as *ex parte* statements. Rather, in nearly every case the pope simply delegated the cause ordering the continuation of proceedings under the prevailing circumstances. In June 1145, for instance, in a letter of delegation to the archbishop of Canterbury, the pope reported that when the monks of Sherborne had appealed against the bishop of Salisbury for instructing his deacon to install a certain monk, Peter, as their new abbot, the bishop, 'contemning the appeal, rose up against them more gravely than before and immediately ordered that one from among their number be captured.' The bishop then blessed his candidate 'against the appeal and placed him over them and stole all of the possessions of the monastery itself as much inside as outside. Finally, having armed a host of men, and going to the monastery itself, he ordered the same monks to be apprehended and dispersed among diverse places and substituted others in their place in the same monastery.' Nevertheless, the pope was cautious in his response, and delegated the cause to the archbishop, 'because we have not been able to give a sure sentence in the absence of the other party over this unsure matter,' instructing him to 'signify to us as thoroughly as possible with your letters the truth of the matter.'[4]

In the one exceptional case, in March 1146, Eugene was compelled to write scathingly to Archbishop Samson of Reims for presuming to crown King Louis VII of France in the city of Bourges 'against an appeal to the apostolic see, which neither you nor any of your predecessors are known to have done, but the archbishops of Bourges...of good memory...are known to have maintained continuously up to the present time in peace and quiet.' In this case, the pope was provoked to express his indignation, complaining that,

> neither did that ultimate refuge of the unfortunate, namely, the appeal of the apostolic see, profit the same archbishop, nor this also, that he would have visited his mother, the holy Roman Church, and our presence with due devotion and was standing before our sight on the same day. Nay, rather, in

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[1] C.R. Cheney, *Innocent III and England*, 113.
[2] Cf., Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256); PUS2, no. 68.
[3] *PL*, Eugene III, no. 101, 329, 450; PUE3, no. 47, 90; PUS1, no. 59; Le bolle pontificie, Montecassino, no. 19 (*IP* 8 180/256).
[4] PUE3, no. 47.

> contempt of us and the highest contempt of St. Peter you usurped with sacrilegious audacity the church of Bourges, having been interdicted from the divine offices, with...the bishop of Soissons...and other suffragans of your church, also with the abbots and many others of your province, and presumed with temerity to celebrate the divine offices in the same place and to carry away the oblations.

Furthermore, with a terminus of appeal having been enacted, the archbishop neither came nor sent to the papal presence proxies who might have responded on his behalf. 'With regard to which, if you would have given solicitous consideration to how you would so offend and detract from the dignity of your mother, the holy Roman Church, you would have by no means rushed forth into such great audacity. Also, the more that you have obtained a more ample dignity from your mother, the holy Roman Church, the more it becomes you to exhibit greater honour and reverence to her.'

Significantly, the offending party had committed a further insult against the majesty of Rome and the privilege of its primacy and favour: 'Neither do we let this pass unnoticed, that our same brother, Archbishop Peter [of Bourges], was promoted to sacred orders in the Roman Church by...Pope Innocent [II]. Accordingly, we want you to know that we regard the injuries to his own church, conferred upon him by God, not those of another, but our own, as if they have been inflicted as much upon us ourselves.' But despite the rhetoric, in practice the pope was compelled to be lenient: 'Therefore, although we are able to pass a most severe sentence against you and your accomplices from the rigour of justice on account of such a great offence and so manifest contempt, nevertheless, on account of the clemency of the apostolic see, we have postponed passing a due sentence.' Nevertheless, 'so that we do not appear to disregard so great an offence and let it pass unnoticed, as it were, in silence, we, with the counsel which has been communicated by our brethren, are interdicting your use of the *pallium*.' The archbishop was thereby given forty days to make restitution to the archbishop of Bourges, with the further deadline of 18 November to appear personally before the pope, 'to respond and make satisfaction,' along with his accomplices, 'who have assisted in such great presumption'—the bishops of Soissons, Arras, Beauvais, Amiens, Senlis, Noyon, and Châlons-sur-Marne, and others.[1] On the same day, a brief letter was issued to the suffragan bishops of Bourges ordering them to obey the archbishop of Bourges, 'just as your proper metropolitan, and to convene at his summons for the purpose of celebrating councils twice in the year in accordance with the statutes of the canons.'[2]

While the papal reaction in this case was severe, and unusual in the issuing of any peremptory sentence or penalty, there were clearly unusual circumstances: the pope regarded the transgression as a personal affront to his own majesty as the archbishop of Bourges had been in personal attendance upon him at the time of the infraction; only eleven days earlier, in fact, the

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[1] *PL*, Eugene III, no. 101.
[2] *EPRI*, no. 196 (JL, 8897).

pope had confirmed the primacy of the archbishop of Bourges over the provinces of Bourges and Bordeaux;[1] while the archbishop himself it was noted had actually begun his career in the Roman curia. Nevertheless, the full punishment in the case of Reims and his accomplices was 'postponed,' and they were simply ordered to respond to the pope and make satisfaction.[2] And in any event, the whole matter would seem to have resolved itself peaceably and without further ado—only two years later, in fact, the pope would celebrate his general council of the Church in the very city of Reims. Indeed, the fervid pitch of the whole letter had an undertone of mere bluster: that the pope could seriously thunder down upon so many important French bishops at one time was highly untenable; and the curia was not so impractical as not to understand as much. Thus, four months later Eugene wrote to the abbot and brethren of St. Thierry, Reims, confirming a judgement passed by Archbishop Samson of Reims in their case with the abbot of Hautvillers, 'because it is the duty of our office to affirm those things done well by our brothers.'[3] Conversely, less than eight months later the pope would have occasion to reprove Archbishop Peter of Bourges, along with the bishop of Maguelonne, because 'the clamour has reached our ears that you are unjustly oppressing the churches of the monastery of Aniane and are imposing undue exactions upon their ministers and are exacting oath-takers from the monks themselves.'[4] And four or five years later the pope would write again to the same archbishop of Bourges, ironically, that 'the abbot of St. Denis, coming to our presence, has lodged a complaint in our sight against your fraternity that, when he came to the presence of the apostolic see for the sake of the various business of his church, you despoiled him of his church of Casa-Major, not so much through justice as through the arbitrariness of your own will.' The archbishop was also accused of stealing for his own personal use all of the goods which the priest of that church had acquired during his lifetime and had arranged to be bequeathed to that church upon his death. The archbishop was thereby ordered to make restitution if the abbot's 'complaint is upheld by truth...so that neither he himself might reckon that his arrival at the apostolic see should afford him injury, and your fraternity might not be regarded as unduly oppressing those churches which pertain specially to the rights of St. Peter and exist especially under his defence.'[5]

By and large, in acts of defiance to papal mandates or authority, the curia was inclined to prefer the carrot to the stick. Thus, a type of clause was not uncommon in the papal letters of the period 1143-53 which averred that although the pope, 'from the rigour of justice,' could or ought to punish various crimes or recalcitrance, he was, 'nevertheless, out of the mercy of the apostolic see,'

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[1] *PL*, Eugene III, no. 94.
[2] See, Bernard of Clairvaux, *Letters*, no. 247 (B.S. James, 323).
[3] PUF1, no. 42 (JL, 8822).
[4] *EPRI*, no. 197 (JL, 8955).
[5] PUF9, no. 45 (*PL*, Eugene III, no. 555; JL, 9678).

somehow tempering that rigour.[1] The pope masked this clemency under an aura of paternal benevolence and mercy; but, in fact, in most cases, it was merely a means of dissembling in the face of the curia's own inherent weakness in enforcing its orders. It was perhaps in this context that sentences, mandates, or instructions were occasionally contingently ordered or stipulated only with the proviso 'if one should not recover his senses (*resipiscere*),'[2] or 'until' such time as one should recover them.[3] Others were ordered or stipulated similarly 'until such time' as one should otherwise comply with papal threats, orders, or instructions, or make satisfaction, or, conversely, contingently 'from' or 'within' which time one should not, or under other various contingent circumstances. In other instances, papal threats, orders, or instructions were stipulated simply 'otherwise' than in compliance with the papal will. Similarly, given the curia's lack of accountable intelligence from the provinces, complaints often times had to be addressed broadly with some vague provision that the information was correct, but while acknowledging the inherent *ex parte* nature of many of the actions put forward at 'Rome.' In fact, the majority of papal letters contain some such contingent clause or proviso, be it stipulating a papal punishment, threat, terms, confirmation, or procedural instruction.

Papal mandates in this regard often had to content themselves vaguely as a quest for 'the truth.'[4] The apotheosis of truth, in fact, was made plain in a singular *arenga* declaring that: 'It is not unknown to your fraternity that, just as our Redeemer is peace and truth, so he urged peace and truth to be loved. Therefore, it corresponds that he is loved by God who is ready to confess the truth, which is God.'[5] Vague clauses in the various judicial mandates of delegation, such as 'having learned ' or 'inquired into the truth [of the matter],' or, especially, 'having inquired into and understood the allegations and accounts,' or simply the mandate to 'ascertain the truth [of the

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[1] For instance: 'Therefore, although from the rigour of justice whatever has been done concerning him against the terms of the judgement of the apostolic see we are able to have annulled, lest anyone accuse us over this of too much severity...' (PUE2, no. 50 [JL, 8863]); '...although these ought to be deprived from the rigour of justice, nevertheless, because it is becoming to exercise the mercy of kindness towards all, let them understand that those things are mercifully granted to them by us' (*PL*, Eugene III, no. 413); see similarly, e.g., *PL*, Celestine II, no. 16; *PL*, Eugene III, no. 60, 62, 101, 244, 351, 370, 500; *APRI* 3, no. 80 (*IP* 6/1, 254/13; JL, 8960); PUF2, no. 36, 37, 41; see also, *PL*, Eugene III, no. 241, 352, 458. In general, for the incidence of the phrase '*rigor* of justice,' as a papal punitive right or justification, see, *PL*, Eugene III, no. 2, 101, 203, 352, 413, 474; *APRI* 3, no. 80 (*IP* 6/1, 254/13; JL, 8960); PUE2, no. 50 (JL, 8863); PUS2, no. 47, 48; PUF7, Nach. Gott., no. 36; also, *PL*, Eugene III, no. 351 ('*rigor* of the canons'); 560 ('*rigor* of ecclesiastical severity'); *EPRI*, no. 212 (JL, 9722) ('*rigor* of *aequitas*'). Similarly, for papal *severitas*, in general, see, *PL*, Eugene III, no. 208, 532, 560, 580; *EPRI*, no. 193 (JL, 8877); PUE2, no. 50 (JL, 8863); PUF2, no. 67, 68, 71; PUF6, no. 61; PUS1, no. 53 (JL, 8546), 54 (JL, 8928); PUP, no. 41. See, for the same clause under Innocent II, *PL*, Innocent II, no. 224, col. 271-72 (JL, 7763); see also, I.S. Robinson, *Papacy*, 206.

[2] See, *PL*, Eugene III, no. 34, 281, 356, 500; *EPRI*, no. 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959); PUE3, no. 86; PUE2, no. 63; PUN, no. 56; PUKHL, no. 63; PUF8, no. 39 (JL, 9637); PUF7, Nach. Gott., no. 28; see also, *PL*, Eugene III, no. 203.

[3] See, *PL*, Lucius II, no. 13; *PL*, Eugene III, no. 353, 494, 528; *EPRI*, no. 206 (JL, 9595); PUF2, no. 67, 68.

[4] For 'truth' or *veritas* in the *arengae*, see, Appendix 1, no. 12, 77, 124, 137 138, 139, 140, 144, 241, 252, 269, 272, 279.

[5] Appendix 1, no. 12 (*PL*, Eugene III, no. 18).

matter],' occurred regularly. C.R. Cheney noted that the 'pope could do little to counteract the misrepresentations of petitioners beyond hedging all grants and mandates with a variety of provisos (*si res ita se habet, inquisita veritate*, etc.) which perhaps encouraged litigation as often as they prevented it.'[1] However, these types of clauses should be read more as vague procedural guidelines than as makeshift defences against fraud *per se*. They appeared rather as acknowledgements of the limitations of the current systems of communications and intelligence, in short, of the curia's limitations in knowing and verifying 'the truth.' In this manner, the clauses attempted to provide the delegates in question with manoeuvrability.

According to S. Chodorow, when the canonists of the second half of the twelfth century were finally able to comprehend the unity of the problems caused by the various forms of dishonest litigation, they were unwilling to undermine their unified approach by taking up the different types and methods of deception and fraud *seriatim*, but merely forth only a single remedy: the explicit or implicit inclusion in every papal letter of the qualification *si preces veritate nitantur*. 'It is no surprise,' Chodorow concluded, 'that the courts, faced with the cases one by one over many years and pontificates, took longer to recognise and act upon this class of cases.'[2] But, in fact, while Chodorow maintained that the canonistic basis of the clause 'if supported by truth (*si preces veritate nituntur*)' would only become a *dictum* of the second and later recension of the *Decretum* of 'Gratian II,'[3] based upon a series of Justinianic law citations, especially, literally, a rescript of the late fifth-century Emperor Zeno,[4] it and similar forms actually occurred in over two dozen papal letters of the period 1143-53, most of which, though certainly not all, occurred after 1149.[5] In

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[1] C.R. Cheney, *Becket*, 66.

[2] S. Chodorow, *Dishonest Litigation*, 187, 197-98. When Alexander III wrote to the archbishop of Canterbury that 'we do not believe that we wrote so positively, and if we did it arose from our being overworked,' he added as a qualification to this admission of papal overstrain and consequent proneness to error that, 'and in a letter of this sort this condition is to be understood even though it be not expressed: "If the petition is supported by the truth."' *Decretales*, Gregory IX, Bk. 1. III. 2, translated by, C.R. Cheney, *Becket*, 65. C.R. Cheney, *Becket*, 65 n. 5, added: 'Where a second commission had been obtained surreptitiously, and made no mention of the first, the first-appointed judges were empowered to go ahead, according to Alexander III's letter on an English case [*Decretales*, Gregory IX, Bk. 1. III. 3]. But in a response to the archbishop of York Alexander ruled that proceedings in such a case should be held up until the pope was consulted [*Decretales*, Gregory IX, Bk. 1. XXIX. 2]. All these decisions were available in the decretal-collections for judges to make their choice.'

[3] Gratian, *Decretum*, C. 25 q. 2 d. p. c. 16; see, A. Winroth, Decretum, 221.

[4] *Codex Iustinianus*, *Corpus iuris civilis* 2, ed. P. Kreuger et al. (Berlin, 1912-; rept., 1954), Bk. 1. XXIII. 7; see, S. Chodorow, *Dishonest Litigation*, 198-99 n. 2.

[5] See, *PL*, Lucius II, no. 10; *PL*, Eugene III, no. 246 (JL, 9085, for the date) (6/22/47), 329 (JL, 9306, for the date) (November 1148), 393 (JL, 9401, for the date) (June 1150), 412 (JL, 9501, for the date) (12/20/51), 423 (1/26/51), 434 (3/10/51), 505 (5/24/52), 506 (5/24/52), 552 (Anno 1153), 566 (Feb. 1153), 574 (2/19/53); PUE3, no. 47 (6/8/45), 90 (Anno 1150-53); PUE2, no. 72 (JL, 9611) (11/3/52); PUS1, no. 62 (2/9/53); PUF2, no. 67 (6/20/53), 68 (6/20/53); PUF9, no. 45 (*PL*, Eugene III, no. 555; JL, 9678) (9/8/51-52); *EPRI*, no. 201 (JL, 9164) (12/18/47), 206 (JL, 9595) (7/7/52); Urkunden zur Geschichte von Farfa, 177-78, no. 1 (*IP* 2, 68/52) (Anno 1145-53); Nachträge zu den PU in Italiens 9, no. 6 (*IP* 7/1, 239/24; JL, 9333) (4/10/49); PU in Piemont, no. 7 (*IP* 6/2, 215/12) (3/18/52); Le bolle pontificie, Montecassino, no. 18 (*IP* 2, 158/12) (Anno 1144); *Collectio Alani*, Bk. 2. XVIII. 4 (Appendix 87), 261 (Kanonistische Ergänzungen zur *Italia pontificia*, no. 84; S. Chodorow, *Dishonest Litigation*, n. 38) (Anno 1146-53). See also, e.g., *EPRI*, no. 211

practice, the real fact of the matter was that papal mandates, at least from this early period, included all manner of more or less vague and contingent procedural clauses, which provided shorthand guidelines through which a prelate could be given a flexible enough commission to 'administer justice.' At great distances, and without the benefit of a precise understanding of the situation at any one place or time, the papal will could only, in most cases, be enacted and enforced loosely. If a cause dragged on, for instance, and was re-appealed to the curia this situation might change. Otherwise, in this way, especially with regard to policing actions, the letters typically stipulated the way in which a prelate should carry out his commission tersely with vague or broad terminology: *mandare*, *monere*, *compellere*, *coagere* (often qualified with the adverb *districte*), *inhibere*, *cohibere*, *compescere*, *frenare*, or, merely, *exhortari*. Quite often, they were instructed simply 'to administer justice (*facere iustitiam*).'[1] In the case of the failure of these actions, it was occasionally stipulated that they impose some 'canonical sentence,' including excommunication. Commonly, in cases committed to judges delegate, the delegates were instructed to 'hear'[2] or 'terminate (*terminare*)'[3] a cause, or both. Other times, they were instructed to impose 'a due' or

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(JL, 9705) (2/17/53): 'Therefore, we order you through the signification of the present letters to together with our brother himself not delay to show your presence to the apostolic see so that that which the truth of the matter holds we might thereupon avail to fully learn.' See also, *PL*, Lucius II, no. 40, 43; *PL*, Eugene III, no. 152 (1/3/47), 523 (Otto of Freising, *Gesta*, 120-22; JL, 9605) (8/17/52), where 'truth,' as in 'if supported by truth,' was simply replaced with 'reason.' In other regards, C.R. Cheney added that 'it was open to any litigant *tacita veritate* to re-open a case that was closed.' C.R. Cheney, *Becket*, 65. The phrase occurred once in this context in the papal letters of 1143-53; see, *PL*, Lucius II, no. 94.

[1] See, *PL*, Celestine II, no. 20, 23; *PL*, Lucius II, no. 14; *PL*, Eugene III, no. 11, 36, 38, 59, 123, 134, 135, 145, 146, 243, 246, 255, 266, 280, 386, 393, 403, 423, 425, 447, 459, 460, 468, 469, 472, 474, 475, 486, 504, 533; *IP* 8, 179/252 (P-H *Iter*, 236; JL, 8655); *EPRI*, no. 188 (JL, 8554), 189 (JL, 8555), 197 (JL, 8955), 198 (JL, 8954); PUE2, no. 36 (JL, 8625), 73 (JL, 9503); PUE1, no. 50 (*HP*, 88; JL, 9513); PUE3, no. 71; PUF6, no. 56, 61; PUF5, no. 60; PUF2, no. 27, 32, 41; PUF7, no. 66; PUF8, no. 39 (JL, 9637); PUF9, no. 45 (*PL*, Eugene III, no. 555; JL, 9678); PUF6, Nach. Gott., no. 11 (JL, 8542); PUS2, no. 57; PUTJ, 17; Nachträge zu den PU in Italiens 9, no. 6 (*IP* 7/1, 239/24; JL, 9333); Cartulaire de l'église Notre-Dame de Paris 1, 27, no. 6 (JL, 9073) (see, 28-29, no. 8); PU in Florenz, no. 12 (*IP* 3, 138/12); Le bolle pontificie, Montecassino, no. 20 (*IP* 8, 180/260), 21 (*IP* 8, 181/261); Archives de l'Orient latin 2, 253, no. 1 (JL, 9165), 253-54, no. 2 (JL, 9166); Wibald, no. 354 (JL, 9521); *Chronicon monasterii de Abingdon* 2, 200 (JL, 9100); Archives de l'Orient latin 2, 255, no. 4 (JL, 9241).

[2] See, e.g., *PL*, Celestine II, no. 25, 44, 46; *PL*, Lucius II, no. 56, 79; *PL*, Eugene III, no. 11, 43, 127, 329, 374, 398, 422, 485, 541; *APRI* 2, no. 379 (JL, 8571), 380 (JL, 8632); *APRI* 3, no. 94 (JL, 9478), 95 (JL, 9480), 96 (JL, 9479); *EPRI*, no. 202 (JL, 9237); PUE2, no. 64 (JL, 9433), 69 (JL, 9546), 71 (JL, 9591), PUE3, no. 48, 49; PUE1, no. 29; PUF2, no. 37; PUF7, no. 66; PUS1, no. 59; PUS2, no. 67, 68; PUF5 Nach. Gott., no. 17; Nachträge zu den PU in Italiens 5, no. 9 (*IP* 5, 464/20); Archives historiques du Poitou 3, 9, no. 6 (JL, 8528), 20, no. 14 (JL, 9314); Archives de l'Orient latin 2, 253, no. 1 (JL, 9165).

[3] See, e.g., *PL*, Celestine II, no. 25, 44, 46; *PL*, Lucius II, no. 40, 56; *PL*, Eugene III, no. 37, 72, 127, 152, 350, 395, 485, 512, 541; *APRI* 1, no. 204 (JL, 8919); *APRI* 3, no. 55 (JL, 8516), 94 (JL, 9478), 95 (JL, 9480), 96 (JL, 9479); *EPRI*, no. 202 (JL, 9237), 213 (JL, 9733); PUE3, no. 48, 49, 79 (JL, 9547); PUE2, no. 64 (JL, 9433), 71 (JL, 9591); PUE1, no. 29; PUF1, no. 55; PUF5, Nach. Gott., no. 17; PUS1, no. 61; PUS2, no. 68; Archives historiques du Poitou 3, 9, no. 6 (JL, 8528), 9, no. 7 (apparently not in JL); Archives de l'Orient latin 2, 253, no. 1 (JL, 9165), 255, no. 4 (JL, 9241); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 364, no. 932 (JL, 8780); *Decretales*, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506); PU in Piemont, no. 4 (*IP* 6/2, 14/28); Nachträge zu den PU in Italiens 5, no. 9 (*IP* 5, 464/20); Nachträge zu den PU in Italiens 9, no. 7 (*IP* 7/1, 239/25; P-H *Iter*, 246; JL, 9668).

'canonical end (*finis*)' upon a cause;[1] while occasionally the pope warned or informed that he would simply ratify whatever those prelates might pass.[2]

Generally, papal 'threats,' 'warnings,' or 'admonitions' abound in the letters, quite commonly as contingencies in the event of the failure of initial orders or threats, often stipulated or otherwise effective only with one 'having been warned' or 'admonished,' or even 'ordered,' once, twice, or even three times. Such clauses were particularly common in the threats of punishment stipulated in the anathema clauses to the various letters—and especially in those to the privileges of protection. In certain cases, the tone of the letters could be vigorously defensive, as in several clauses, for instance, which stated that the curia or pope could not allow a certain crime or act 'to pass unpunished,' or the like.[3] The occurrence of the term 'vengeance,' referring vaguely to papal

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[1] See, *PL*, Celestine II, no. 25, 44, 46; *PL*, Lucius II, no. 40, 43, 70; *PL*, Eugene III, no. 18, 72, 76, 82, 127, 152, 209, 324, 350, 358, 395, 431, 487, 512, 527, 541, 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 67; *IP* 5, 251/25, 181/6; JL, 9654); *IP* 5, 278/7; *APRI* 2, no. 380 (JL, 8632), 382 (JL, 8654), 383 (JL, 8659); *APRI* 3, no. 80 (*IP* 6/1, 254/13; JL, 8960); *EPRI*, no. 202 (JL, 9237), 213 (JL, 9733); PUE3, no. 49, 79 (JL, 9547), 82, 90; PUE2, no. 64 (JL, 9433), 71 (JL, 9591); PUE1, no. 29, 45; PUF2, no. 70; PUF1, no. 42 (JL, 8822); PUF5, Nach. Gott., no. 17; PUS1, no. 61; PUS2, no. 56 (JL, 8934), 67, 68; *Decretales*, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506); Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256); Nachträge zu den PU in Italiens 9, no. 7 (*IP* 7/1, 239/25; P-H *Iter*, 246; JL, 9668).

[2] See, *PL*, Lucius II, no. 41, 43; *PL*, Eugene III, no. 3, 96, 298, 344, 542, 560, 561, 559, 562; PUE3, no. 62; PUE2, no. 63; PUF2, no. 19, 24; PUN, no. 54; PUS2, no. 47; *EPRI*, no. 190 (JL, 8612); 207 (JL, 9632); PUF6, Nach. Gott., no. 12 (JL, 8543).

[3] See, e.g., *PL*, Celestine II, no. 17, 20; *PL*, Lucius II, no. 14, 19; *PL*, Eugene III, no. 2, 28, 29, 34, 62, 91, 101, 105, 118, 145, 146, 149, 208, 209, 247, 255, 303, 323, 337, 351, 352, 362, 366, 391, 403, 413, 427, 443, 449, 465, 467, 514, 528, 529, 537, 552, 557, 563; *APRI* 2, no. 390 (JL, 8816); *APRI* 3, no. 80 (*IP* 6/1, 254/13; JL, 8960); Kanonistische Ergänzungen zur *Italia Pontificia*, no. 66 (*IP* 5, 236/11); *EPRI*, no. 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959); PUE3, no. 54, 71; PUE1, no. 50 (*HP*, 88; JL, 9513), 54; PUE2, no. 36 (JL, 8625); PUF2, no. 32, 67, 68; PUN, no. 59; PUS2, no. 54 (JL, 8936), 56 (JL, 8934), 57; PUF7 Nach. Gott., no. 30; PU in Florenz, no. 12 (*IP* 3, 138/12) 14 (*IP* 3, 138/15); *Chronicon monasterii de Abingdon* 2, 200 (JL, 9100); Urkunden zur Geschichte von Farfa, 177-78, no. 1 (*IP* 2, 68/52); see also, *PL*, Eugene III, no. 247, 362, 499. For due papal 'punishment' which otherwise was deferred on account of papal 'mercy,' see, *PL*, Celestine II, no. 16; *PL*, Eugene III, no. 60; PUF2, no. 36, 37, 41. For the occurrence of the term 'punishment' in the eschatol, or anathema clause, only, see, e.g., *PL*, Eugene III, no. 228, 239, 548; PUE2, no. 56. For the incidence of the term *censura*, see, e.g., *PL*, Celestine II, no. 24, 31 (P. Classen, *Gerhoh von Reichersberg*, 341-42, no. 31; JL, 8484); *PL*, Lucius II, no. 55, 57; *PL*, Eugene III, no. 123, 124, 134, 243, 280, 465, 507, 532, 580; *APRI* 2, no. 385 (JL, 8695), 388 (JL, 8775), 389 (JL, 8814); *EPRI*, no. 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959), 201 (JL, 9164), 212 (JL, 9722); PUE2, no. 40 (JL, 8686), 63; PUE3, no. 58, 69, 79 (JL, 9547); PUF2, no. 67, 68, 71; PUS1, no. 53 (JL, 8546), 54 (JL, 8928); PUS2, no. 46; PUP, no. 41; PU in Piemont, no. 7 (*IP* 6/2, 215/12). For the occurrence of the term 'penalty (*poena*),' see, e.g., *PL*, Eugene III, no. 203, 351, 352, 476, 499, 563, 583 (*IP* 3, 251/1; JL, 9726/9727); PUF7, Nach. Gott., no. 30; *LC*, 403-04, no. 124 (*Antiquitates* 4, 241-42; *IP* 3, 482/1), *LC*, 382-83, no. 92 (Theiner 1, 14-15, no. 18; *Antiquitates* 3, 777-78; *IP* 1, 187/5), *LC*, 383, no. 93 (*Antiquitates* 3, 779; *IP* 1, 192/2), *LC*, 384, no. 95 (*Antiquitates* 2, 559-60; *IP* 2, 207/1); Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465), Theiner 1, 14, no. 16 (*LC*, 402-03, no. 123; *Antiquitates* 4, 37-38; *IP* 2, 204/2); PU in Venetien, no. 7 (*IP* 7/1, 106/1); PU in Piemont, no. 7 (*IP* 6/2, 215/12); PU in Campanien, no. 10 (*IP* 2, 147/4). For the occurrence of *periculum* in the context of a threat or warning, see, e.g., *PL*, Eugene III, no. 453, 494, 500, 520, 557, 559; *APRI* 2, no. 391 (JL, 8784); *EPRI*, no. 197 (JL, 8955); PUF2, no. 19; in the eschatol only, see, e.g., *PL*, Celestine II, no. 4, 10; *PL*, Eugene III, no. 76, 228, 239, 308; *APRI* 3, no. 55 (JL, 8516); PUE2, no. 56; PUF5, no. 62; PUN, no. 51; Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4). See also, e.g., for other papal 'censures' and 'reprimands:' *PL*, Eugene III, no. 229, 408, 520; *IP* 6/1, *252/3; *APRI* 3, no. 73 (JL, 8898); PUS1, no. 61; *Collectio Lipsiensis*, XXXI. 4 (Kanonistische Ergänzungen zur

vengeance, typically as *ultio*, likewise was common in the letters, especially in the anathema clauses.[1] In fact, throughout the letters papal threats and warnings appeared with far greater frequency than actual sentences of punishment,[2] while generally admonitions were stipulated in letters of delegation more or less as often as firmer 'mandates' or 'orders.' The various verbal forms of *monere* were most common in the letters by which the papal will was expressed or was to be enforced, as compared for instance to the more mild forms *hortari* or *suadere*, on the one hand, and *mandare* or *praecipere*,[3] on the other. To a considerable extent, this argument falls into a question of semantics, and the inherent wordplay in papal rhetoric: the extent to where the line should be drawn with regard to various papal *-monita* between advice, warnings, compulsion, and actual mandates, which, in the latter case, were invariably given *per apostolica scripta*. In this way, chancery language tended to express the papal will almost purposefully ambiguously. In this

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Italia Pontificia, no. 53; *IP* 4, 219/2; JL, 9658). For the occurrence of papal *correctio*, see, e.g, *PL*, Celestine II, no. 14, 20; *PL*, Lucius II, no. 91; *PL*, Eugene III, no. 3, 25, 105, 135, 149, 159, 209, 231, 239, 244, 254, 256 (*IP* 7/1, 339/42; JL, 9189), 264, 395, 414, 468, 470, 472, 476, 495, 499, 512, 532, 560, 561, 562, 570/71; JL, 9149 (complete text) (*PL*, Eugene III, no. 232); Mansi 21, 713-18 (JL 2, 52-53), Council of Reims, c. 4; *APRI* 2, no. 403 (JL, 9603); *APRI* 3, no. 82 (*PL*, Eugene III, no. 141; JL, 8975); *EPRI*, no. 190 (JL, 8612), 192 (JL, 8833), 193 (JL, 8877), 202 (JL, 9237), 203 (JL, 9243); PUE3, no. 63; PUE1, no. 49; PUF1, no. 44; PUF2, no. 33, 34, 36, 37, 58, 67, 68; PUF9, no. 45 (*PL*, Eugene III, no. 555; JL, 9678); PUF1, Nach. Gott., no. 31 (JL, 8832); PUF7, Nach. Gott., no. 29; PUS1, no. 53 (JL, 8546), 54 (JL, 8928), 59, 61, 62; PUP, no. 41; PU in Piemont, no. 7 (*IP* 6/2, 215/12); PU in Pisa, no. 2 (*IP* 5, 61/204); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 369-70, no. 941 (JL, 9393); PU in Mailand, no. 9 (*IP* 7/1, 339/38; P-H *Iter*, 239; JL, 8749; the same, nearly, as *Antiquitates* 5, 259-60, *PL*, Innocent II, no. 158, col. 208-09, both from Innocent II); Nachträge zu den PU in Italiens 2, no. 9 (*IP* 3, 179/15; JL, 8497). For the occurrence of papal *correctio* in the eschatol or anathema clause only, see, e.g., *PL*, Lucius II, no. 25; *PL*, Eugene III, no. 100, 126, 174, 228, 513, 527, 533, 548, 577; *APRI* 1, no. 211 (JL, 9074); *APRI* 3, no. 75 (JL, 8916), 76 (*IP* 3, 325/29; *IP* 10, 383/42; JL, 8929), 84 (JL, 9007), 99 (JL, 9441); PUE3, no. 65, 78; PUE1, no. 38; PUE2, no. 34, 41, 43, 55, 56, 60, 75; PUF1, no. 42 (JL, 8822); PUF2, no. 61 (JL, 9437); PUF5, no. 62, 65, 71, 72; PUF1, Nach. Gott., no. 42 (JL, 9669); PUF2, Nach. Gott., no. 14; PUF6, Nach. Gott., no. 15; PUN, no. 57; PUS1, no. 60; PUS2, no. 62; PUP, no. 51; PUTJ1, no. 13; Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4); Nachträge zu den PU in Italiens 9, no. 5 (*IP* 7/1, 298/2; JL, 8737); PU in Pisa, no. 4 (*IP* 5, 62/213); PU in Padova, no. 3 (*IP* 7/1, 315/6); Römische Analekten, 35-36, no. 3 (*IP* 1, 77/20); PU in westlichen Toscana, no. 6 (*IP* 3, 432/100; JL, 9481); PU in Nonantola, no. 3 (*IP* 7/1, 298/1; P-H *Iter*, 238; JL, 8701); *Historia monasterii S. Augustini Cantuariensis*, 390-91, no. 22 (*PL*, Lucius II, no. 80; JL, 8581), 402, no. 30 (JL, 9537).

[1] See, e.g., *PL*, Lucius II, no. 89; *PL*, Eugene III, no. 135, 145, 146, 228, 247, 288, 370, 376, 476, 494, 499, 506, 514, 563, 564, 565; *EPRI*, no. 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959); PU in Piemont, no. 7 (*IP* 6/2, 215/12). For 'vengeance (*ultio*)' in the eschatol, or anathema clause, only, see, e.g., *PL*, Celestine II, no. 28 (*RRH*, no. 221; JL, 8481); *PL*, Lucius II, no. 23, 25, 40, 48; *PL*, Eugene III, no. 2, 100, 126, 152, 174, 222, 239, 512, 527, 533, 548, 577; *APRI* 1, no. 211 (JL, 9074); *APRI* 3, no. 320 (JL, 8575: see, JL, *Addenda et corrigenda*—wrongly attributed to Lucius III), 61 (JL, 8664), 70 (JL, 8826), 75 (JL, 8916), 76 (*IP* 3, 325/29; *IP* 10, 383/42; JL, 8929), 91 (JL, 9292), 99 (JL, 9441); *Historia monasterii S. Augustini Cantuariensis*, 391-92, no. 23 (*PL*, Lucius II, no. 82; JL, 8580); PUE3, no. 65; PUE2, no. 43, 55, 56, 66; PUF5, no. 65, 71, 72; PUF6, no. 61; PUF1, no. 42 (JL, 8822), 43; PUF6 Nach. Gott., no. 15; PUF2, Nach. Gott., no. 14; PUP, no. 51; PUS2, no. 62; PUN, no. 46, 57; PUTJ1, no. 13; PUKHL, no. 50 (*RRH*, no. 214; JL, 8472a), 58 (*PL*, Lucius II, no. 88; JL, 8700); PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); Römische Analekten, 35-36, no. 3 (*IP* 1, 77/20); Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4); PU in Padova, no. 3 (*IP* 7/1, 315/6); PU in Pisa, no. 4 (*IP* 5, 62/213).

[2] Cf. above, for instance, for *arengae* on papal forgiveness of resistance, disobedience, or contumacy through papal mercy or kindness, and the occurrence of papal or apostolic 'mercy/clemency' (*clementia*), generally, in the *arengae*.

[3] Or less commonly, e.g., *prohibere*, *inhibere*, *decernere*, *censere*, *sancire*, *iungere*, *iubere*, *imperare*.

sense, it was not merely accidental that the pope would write to Archbishop Theobald of Canterbury in 1152: 'We greatly wonder that, sometimes, when on account of the complaints which are referred to us we write more firmly to your fraternity, you prosecute the causes themselves with dissembling and negligently, at other times you endeavour to interpret our letters according to your will and, when we extend only wishes, you claim that you have accepted a mandate and understand our will.'[1]

In any event, there were also cases of the legitimate 'mercy of the court,' which did not apparently result from papal weakness *per se*. In May 1149, for instance, Eugene wrote to the abbot of St. Augustine, Canterbury: 'The obedience and patience which is required of other men of the Christian religion is all the more expected from those who are known to have assumed the more perfect life, who at any rate must be judged so much the more reprehensible the more they are provoked to disobedience or indignation without cause.' Therefore, the pope assured, 'however much we can from the rigour of the canons, because your brethren have presumed with temerarious audacity to violate our sentence, more violently make heavy our hand against them and the aforementioned monastery, nevertheless, because it is becoming to be more pious than severe, we have decided to indulge them thus, so that their excess remains neither entirely unpunished, nor are they incited to disobey the penalty which they have already promised to endure.' Therefore, he warned, 'it is in yourinterest to provide accordingly, lest your brethren ultimately endure what others naturally would on account of their remarkable excess and incur our indignation and that of St. Peter.'[2] At the same time the pope wrote to the archbishop of Canterbury: 'Since we esteem your person with special affection, we therefore honour you as much as justice permits; therefore, having been moved so far with a love of charity, deferring the prior of St. Augustine and the monk William to your fraternity, we have committed them to you to be absolved from the penalty which we inflicted upon them from the rigour of justice on account of the fact that they had raised themselves up against your interdict.' Accordingly, 'lest the grace of the apostolic see which has been shown to your charity proves damaging unto itself, and those who have been named already are incited to bemoan our own excess more justly,' the archbishop was ordered 'to allow them by no means to be afflicted further with this penalty; but pray have pity on them and absolve them from the sentence under which they are held,' for, 'it is becoming that we be not so much severe as merciful.'[3]

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[1] PUE2, no. 73 (JL, 9503).

[2] *PL*, Eugene III, no. 351 (JL, 9341, for the date).

[3] Furthermore, it was added, it had been signified to the curia that the men of the same monastery, because they had communicated with the excommunicates, had been 'compelled to a redemption beyond the ecclesiastical penalty. And this appears unusual and strange to the path of reason. For, they are not ones to be punished twice in this affair; especially those who are compelled to obey the orders of their lords. Truly, because it is becoming that we be not so much severe as merciful, we order your fraternity to cause to be restored without vexation, all which has been seized from them. For, we do not wish that novelties are

This case and its rhetoric notwithstanding, the problem of papal resistance was part and parcel of the general problem of enforcement. And J. Sayers noted that, because of this problem, the majority of suits which she studied from the thirteenth century were ended by compositions, which were popular with the judges and officers of the courts. Even then, however, she added, there was potential difficulty, if the composition and arrangements were made only for the lifetime of the incumbent concerned; and suits were inevitably re-opened as the circumstances changed: new land might be brought under cultivation upsetting an existing arrangement; or a new rector might be appointed who was not prepared to abide by a settlement made by his predecessor. And while the existence in procedure of many penalties and checks against failure to comply with settlements suggests that they were not always easily enforced, the enforcement of judgements must have been even more difficult to effect. Thus, according to Sayers, there was a 'policy' of judges generally to prevail upon parties to make compositions. And the parties themselves probably shared this disposition, as they themselves often times assumed the leading role in compositions: often times it appears to have been the parties who made the compositions and the judges who confirmed them.[1] As a course of procedure, the pope was clearly interested in the period 1143-53 in achieving settlements or compromises in cases; and, in fact, a great many letters simply confirmed such settlements arranged either at Rome or, more typically, in the provinces.[2]

Such propensity to settle, as opposed to passing sentence, has been construed as a defect of any judicial system, or symptomatic of a 'primitive' one.[3] For C.R. Cheney, 'those who administer justice under any system have always found it convenient to hide their fallibility behind compromises agreed between the parties.' But, he added, 'this is no condemnation of the system of judges delegate. The practice speeded a suit and reduced the suitors' costs.'[4] Beyond this, in sum, the toil, expense, and peril accompanying the journey to the papal curia, the potential of encountering dishonest litigants there or being exploited by parties manipulating the appellate procedure, the curia's own inherent limitations in acquiring reliable intelligence, and the potential of ineffectual enforcement of the curia's acts were all potential problems associated with the systems of papal justice. But like any system, let alone a medieval one, it had its shortcomings; and these must be weighed against its systemic advantages and allure. For, in the course of the second half of the twelfth century the flow of the traffic of supplicants on the road to 'Rome' hardly

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introduced into your church.' *PL*, Eugene III, no. 352 (JL, 9342, for the date).

[1] J. Sayers, *Judges Delegate*, 239-68.

[2] See, ch. 7.2.

[3] See, R.C. Van Caenegem, *Royal Writs in England*, 42.

[4] C.R. Cheney, *Innocent III and England*, 113-18, here at, 118. Innocent III had a predilection for 'settlement which offered some hope of peace in the future, and in criminal cases his sentences were hardly draconian...Such moderation, it must be admitted, was partly a matter of necessity or a tacit confession of weakness.' C.R. Cheney, *Innocent III and England*, 117; see also, C.R. Cheney, *Becket*, 72.

diminished. The system was not abandoned.

7 *PAPAL JUSTICE: ADVANTAGES*

Despite the potential drawbacks and defects of papal justice, the stark reality remains that litigants and petitioners throughout Europe continued to come to the court of the pope in ever greater numbers from the middle decades of the twelfth century. The question then arises why so many clerics or litigants continued to brave the costs, dangers, and toil of the journey to 'Rome,' only to settle for a potentially corrupt, expensive, ignorant, and inefficient system of justice. Over a century ago, F.W. Maitland pondered: 'When we think of high seas and high Alps, and the dangers that beset the medieval wayfarer, we may marvel at the preference thus shown for a procedure which begins with a tedious, toilsome, and perilous journey, undertaken by the two or three bearers of a petition to a foreign prelate. Why not be content with the courts at home, where there was an archdeacon always at hand and the bishop's official was never many miles away?'[1] The answer to this question must inevitably be that, in the eyes of applicants, clergy and laymen alike, the systems of papal justice offered definite benefits and value. To be sure, most of what ultimately resulted in criticism of these systems may have been perceived as a boon to certain less scrupulous clerics. Distance itself could be a good cover for fraud, especially through *suggestio falsi* or the suppression of truth, as the curia had no means of immediately verifying all facts concerning cases originating great distances away.[2] One could also attempt to take advantage of venality, and aim to buy justice. Otherwise, one could attempt to abuse the appeal system, or avail oneself through forgery; while the expense, toil, and hazard of the journey to 'Rome' itself could have served to deter potential opponents. Of course, many of these potentialities had surely been anticipated through the delegate system, whether or not that system seriously eased or in fact complicated procedures.

Otherwise, the papal record suggests that the curia consistently took measures to avoid giving advantage to any party on the basis of purely *ex parte* proceedings: that is, the curia was basically hesitant to issue peremptory mandates far less judgements in the immediate absence of an opposing party or its evidence; otherwise, it consistently attempted to stipulate in letters addressing complaints that they had in fact been aired *ex parte*, providing various provisos that the party in question should obtain redress only if their complaint proved valid or other evidential conditions were met. In many cases these things only protracted the duration of causes; yet they were also part and parcel of an overall concern for fairness in procedure which helps to explain the curia's

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[1] F.W. Maitland, *Canon Law*, 113; cf., I.S. Robinson, *Papacy*, 183.
[2] See, C.R. Cheney, *Becket*, 66; also, J.C. Moore, *Baldwin*, 79-89.

hesitance to punish promptly and decisively parties seemingly guilty of evasive or other unscrupulous tactics. If nothing else, the papal record gives the impression of a system of justice which hedged on the side of fairness, not infrequently to the detriment of expedition or 'efficiency.' Nevertheless, the overall impression left by the papal record is that, at least in this period, while outright tactical abuse of the appeal system was encountered perhaps more than occasionally, overt acts of fraud, including especially forgeries, were seldom encountered, either in the course of litigation or as means of deceitfully securing rights or possessions through papal confirmations or privileges. Indeed, most of the later twelfth-century papal legislation on the subject of dishonest litigation would arise as responses to queries on the part of judges in the provinces who were encountering these very problems in their own courts.[1] Thus, dishonest litigation, in any form, was not a purely papal problem. By and large, in fact, at least for the mid-twelfth century, the papal record suggests that most cases proceeded without undue or unusual complications. In other words, the record for cases brought before the curia suggests that the majority was resolved duly, and without chicanery or sustained resistance, through the basic processes of papal justice. Admittedly, this is largely an argument from silence, and does not in and of itself dispel the existence of practice of dishonest litigation, at least insofar at it was practised effectively. Yet, ultimately, it is exceedingly difficult to conclude, on the basis of the papal record, that the systems of justice offered by the pope in this period did not work to the relative satisfaction of those who sought them.

Thus, other far more positive explanations must be sought for the preference for or success of papal justice in this period. First of all, churchmen chose to trust in papal authority. In turn, the pope could use this trust to the advantage of the churches—in spite of instances of sustained resistance. The pope could cut across lines of jurisdiction and commission or address in any single cause simultaneously multiple ecclesiastical or secular agents—in the case of bishops, this only increased their own authority in matters of judgement and enforcement in particular causes. Indeed, as has been stressed throughout the length of this thesis, all papal systems of delegation, at least at mid-century, were serving to integrate papal business and the powers of the episcopate, which otherwise, in so many cases, must have been perceived as relatively impotent in alone providing the justice desired by so many petitioners and litigants now availing themselves of the authority of Rome. And for most medieval clerical litigants, the assurance of the success of their cause was more important than a speedy denouement. At the same time, a great number of cases being appealed or presented to the curia involved one or more bishops as parties who were themselves on their own initiative looking to the pope's as the proper forum for the settlement of

[1] Walter of Châtillon also declared that in the late twelfth century no one could get anywhere in an episcopal court if his 'purse has not yet vomited.' Walter of Châtillon, *Moralisch-satirische*, 6; also, J.A. Yunck, *Lineage of Lady Meed,* 97; see also, L. Little, *Religious Poverty*, 34.

their own causes. Perhaps the relative peace within the Church in this period contributed to all of these circumstances.

Equally as important, the curia itself could offer a claimant a basically rational procedure, along with legal expertise, and a sophisticated system of documentation. In this last case, the nature of papal justice and its writing systems meant that appellants and petitioners could maximise the value of the expensive and hazardous journey to 'Rome' by storing up and carrying to the curia at once a series of causes or business which in turn could be addressed in writing by the curia together in a single inclusive mandate or, more commonly, in a series of papal letters dispatched on their behalf. At the same time, litigants at the curia commonly exploited the occasion of their visit by securing simultaneously papal confirmations or privileges of protection for the rights and possessions of their churches or offices. Furthermore, while at 'Rome' parties as well as the curia could have recourse to the papal registers, especially for the purposes of authentication or evidence. Similarly, and perhaps most importantly, the record clearly demonstrates that the use of authentic documentary evidence, especially papal documents, had become an essential element in the process of proving one's case both at the curia and as stipulated in cases delegated back to the provinces. In return, litigants at the curia could expect written papal accounts of their causes of varying elaboration which enshrined their outcomes, or the parties' rights, in technical and authenticated detail—this same service was provided for even more petitioners not actually litigating who had their customs or rights guaranteed at the curia or their older documents replaced or updated. In this way, the curia operated as the pre-eminent deeding office of the Church. In fact, in certain cases the elaborate, often petty, terms of papal letters to causes acted in effect as written constitutions for the jurisdictional and proprietary relationships between local clerics or even clerics and laymen.

7.2 'RATIONAL' PROCEDURE

There is little to no indication in the papal record of the extent to which the curia was conscious of a reputation for unfairness in procedure at court. In June 1147, in a curious and singular instance regarding the *ex parte* nature of judicial procedure at the curia, the pope wrote to the bishop of Avranches carefully pointing out that the 'bearer of the present letters, Radulf, a canon of the Fougères, by whom he has been aggrieved, has, just as you have signified to us, appealed to our audience. Having canonically received letters concerning these things from you, he, just as he should have, has accompanied his appeal. Truly, the canons, obviously doubtful of their cause, have neither come nor sent someone on their behalf.'[1] The suggestion was that the curia preferred

[1] PUF2, no. 48.

if it did not expect appellants to accompany their appeals personally to Rome simultaneously with the defending party—although in practice this was not always the case—and possibly even with letters from the ordinary. Otherwise, the Spanish author of the protocol of Huesca quoted Eugene III admitting to the assembly at the trial between the bishops of Huesca and Roda in early 1145, concerning the cardinal delegates' procedure in the examination of the cause, a vague awareness of suspicion of the integrity of the papal court: '"our brothers, without fraud, as certain malevolent men believe, but with the zeal of pious charity seeking the basis of truth, have diligently inquired into and thoroughly and fairly examined then and there the muniments [of both parties]."'[1]

Otherwise, in its own rhetoric the curia celebrated its fairness. The term *iustitia* appeared constantly throughout the papal letters of 1143-53. The terms 'equity,' as *aequitas*, 'justness' or 'fairness,' as *aequum/iustum*, or 'impartiality (*media aequitas*)' occurred in nearly one-fifth of the total letters proper.[2] These virtues were equally prevalent in the *arenga* statements.[3] And by and large it appears that, in practice, the curia took measures to protect against the prejudicial nature of *ex parte* proceedings, as most papal mandates made explicit or implicit qualifications that some claim or report had arrived at the curia *ex parte*.[4] The chancery was not reticent about

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[1] PUS2, no. 46; see above, ch. 3.5.

[2] See, *PL*, Celestine II, no. 3, 10, 17, 24, 28 (*RRH*, no. 221; JL, 8481), 29 (*RRH*, no. 222; JL, 8482), 46; *PL*, Lucius II, no. 23, 36, 41, 43, 48, 68, 75, 84; *PL*, Eugene III, no. 9, 36, 38, 39, 81, 87, 93 (*Bambergensia*, no. 35; JL, 8882), 100, 123, 124, 125, 126, 131, 147, 148, 149, 150, 169, 174, 195, 201, 203, 228, 244, 246, 247, 259, 266, 279, 289, 308, 336, 344, 359, 362, 366, 372, 373, 379, 385, 395, 400, 401, 404, 408, 418, 425, 449, 450, 461, 468, 472, 474, 484, 486, 497, 507, 541, 542, 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 67; *IP* 5, 251/25, 181/6; JL, 9654), 563, 569, 570/71, 577, 584; PUE3, no. 49, 50, 58, 65, 69, 71, 78, 82; PUE1, no. 38; PUE2, no. 33, 34, 36 (JL, 8625), 41, 43, 45, 56, 60, 65 (JL, 9428), 66, 72 (JL, 9611), 73 (JL, 9503), 75; PUF1, no. 41 (JL, 8756); PUF5, no. 58, 59, 60, 67, 72; PUF2, no. 19, 37, 42, 43 (JL, 8961), 46, 61 (JL, 9437), 68, 71; PUF3, no. 30 (*Chronica S. Bertini*, 801; *PL*, Eugene III, no. 15-16; JL, 9510); PUF6, no. 56, 62, 63 (JL, 9358); PUF7, no. 57 (JL, 8912), 70 (PUTJ1, no. 14; JL, 9438); PUF8, no. 19 (JL, 8487), 31, 42; PUTJ1, no. 13, 17; PUS1, no. 53 (JL, 8546), 54 (JL, 8928), 60, 61, 62; PUP, no. 41; PUF6, Nach. Gott., no. 15; PUF1, Nach. Gott., no. 27 (JL, 8584), 30 (JL, 8819), 31 (JL, 8832), 42 (JL, 9669); PUF2, Nach. Gott., no. 15; PUF7, Nach. Gott., no. 30, 36; *Antiquitates* 3, 1167 (*IP* 3, 326/32); PUKHL, no. 58 (*PL*, Lucius II, no. 88; JL, 8700); Ältere PU in den päpstlichen Registern 3, no. 2; PU in Nonantola, no. 3 (*IP* 7/1, 298/1; P-H *Iter*, 238; JL, 8701); Römische Analekten, 35-36, no. 3 (*IP* 1, 77/20); PU in Pisa, no. 2 (*IP* 5, 61/204), 4 (*IP* 5, 62/213); Nachträge zu den PU in Italiens 4, no. 8 (*IP* 5, 196/4); Nachträge zu den PU in Italiens 9, no. 5 (*IP* 7/1, 298/2; JL, 8737), 6 (*IP* 7/1, 239/24; JL, 9333); Archives de l'Orient latin 2, 253-54, no. 2 (JL, 9166); Varietà, 400-03, no. 1 (*IP* 1, 173/3; JL, 9604); *Chronicon monasterii de Abingdon* 2, 200 (JL, 9100); *Historia monasterii S. Augustini Cantuariensis*, 402, no. 30 (JL, 9537), 403-04, no. 31 (JL, 8990); PU in westlichen Toscana, no. 6 (*IP* 3, 432/100; JL, 9481); Archives historiques du Poitou 3, 20, no. 14 (JL, 9314), 20, no. 15 (JL, 9315); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 369-70, no. 941 (JL, 9393); *APRI* 1, no. 211 (JL, 9074), 227 (JL, 9672); *APRI* 2, no. 382 (JL, 8654), 383 (JL, 8659), 385 (JL, 8695), 387 (JL, 8774), 391 (JL, 8784), 400 (JL, 9564), 401 (JL, 9574), 402 (JL, 9575); *APRI* 3, no. 55 (JL, 8516), 61 (JL, 8664), 76 (*IP* 3, 325/29; *IP* 10 383/42; JL, 8929), 99 (JL, 9441); *EPRI*, no. 191 (JL, 8751), 196 (JL, 8897), 197 (JL, 8955), 200 (JL, 9079), 212 (JL, 9722); also, PUS2, no. 66 (*studiis remotiis de medio partium*).

[3] For *aequitas*, see, Appendix 1, no. 124, 131, 215, 233, 234, 249, 267, 272, 274; for *iustum/aequum*, see, Appendix 1, no. 1, 9, 41, 84, 100, 123, 124, 129, 131, 154, 169, 180, 193, 206, 235, 236, 241, 276, 281, 291; for *iniusta*, see, Appendix 1, no. 125, 126, 127, 131, 276, 281.

[4] See esp., e.g., where the pope literally qualified that a complaint had arrived only '*ex parte*:' *PL*, Eugene III, no. 123, 124, 303, 386, 403, 412, 460, 552; *APRI* 1, no. 227 (JL, 9672); *APRI* 3, no. 94 (JL, 9478), 95 (JL, 9480), 96 (JL, 9479); *EPRI*, no. 208 (JL, 9663); PUE3, no. 58, 69; PUE2, no. 69 (JL, 9546); Nachträge

acknowledging the limitation of its own intelligence, and it acted accordingly. Thus, peremptory or summary sentences were almost never passed over causes without participation of both opposing parties. For instance, in November 1147 Eugene wrote to the archpriest and canons of the church of Pisa: 'Further, concerning those things which you have intimated to our ears with your letters concerning the appeal made by you, until we may more fully understand the cause, we have been unable to give a certain response to you.'[1] In early 1153, in the case concerning the disputed election to the abbacy of Mont St. Michel (*in periculo maris*)—the duke of Normandy had been accused of forcibly imposing his own candidate—the pope, 'since concerning [the] election different things have been carried to our ears from the mouths of various men, so that the truth of the matter more fully eludes us,' personally summoned the bishop of Avranches and the monks' own candidate to his presence: 'so that that which the truth of the matter holds we might thereupon avail to learn fully, and more adequately tend to that which pertains to the well-being of the Church.'[2]

In many instances, the inevitability of proceeding *ex parte* was a direct cause of the various procedural contingencies inherent in papal letters of justice as discussed above. In this way, Eugene wrote to the bishop of Exeter in November 1152: 'Just as those which justly and rationally come to pass ought to obtain their own strength, so those which are obtained against ecclesiastical reason and honesty ought to be, with the truth understood, nullified and voided. It has come to our ears that you would have newly restored to William Cumin the church...which from the mandate of the apostolic see he has released, and you would have stolen it from William Giffard, who has rationally obtained it from the mandate of...the archbishop of Canterbury, legate of the apostolic see.' Therefore, the bishop was ordered, 'if this is the truth of the matter, with appeal having been removed,' to restore the church to the aforementioned William Giffard.[3] At the same time, at least one-tenth of the total papal letters of the period 1143-53 made an express effort to indicate or stipulate the participation of 'both parties (*pars utraque*)' in any particular cause.[4] In a similar regard, commissions to judges delegate regularly stipulated, often times on the

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zu den PU in Italiens 9, no. 6 (*IP* 7/1, 239/24; JL, 9333); cf., e.g., *PL*, Eugene III, no. 152.

[1] *APRI* 2, no. 394 (JL, 9160); see similarly, e.g., *PL*, Lucius II, no. 39; *PL*, Eugene III, no. 201, 332.

[2] *EPRI*, no. 211 (JL, 9705); also, *EPRI*, no. 206 (JL, 9595), 210 (JL, 9704).

[3] PUE2, no. 72 (JL, 9611).

[4] See, *PL*, Celestine II, no. 3, 25, 41, 44, 46; *PL*, Lucius II, no. 24, 25, 41, 43, 55, 56, 89; *PL*, Eugene III, no. 2, 6, 11, 25, 37, 39, 43, 72, 76, 82, 127, 152, 169, 183, 201, 253, 256 (*IP* 7/1, 339/42; JL, 9189), 264, 324, 329, 350, 366, 372, 373, 374, 395, 401, 422, 452, 485, 487, 512, 541; *IP* 5, *61/207; *IP* 6/2, *135/14, *378/16, *382/2; *APRI* 1, no. 204 (JL, 8919), 207 (JL, 8996); *APRI* 2, no. 382 (JL, 8654); *APRI* 3, no. 55 (JL, 8516), 70 (JL, 8826), 76 (*IP* 3, 325/29; *IP* 10, 383/42; JL, 8929), 94 (JL, 9478), 95 (JL, 9480), 114 (JL, 9732); Archives historiques du Poitou 3, 9, no. 6 (JL, 8528), 20, no. 14 (JL, 9314); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 369-70, no. 941 (JL, 9393); *EPRI*, no. 201 (JL, 9164), 202 (JL, 9237), 210 (JL, 9704), 211 (JL, 9705), 213 (JL, 9733); PUE2, no. 52, 64 (JL, 9433), 69 (JL, 9546), 71 (JL, 9591); PUE1, no. 29; PUE3, no. 47, 49, 79 (JL, 9547), 90; PUF5, no. 69 (JL, 8823), 80 (JL, 9613); PUF2, no. 27, 37, 70; PUF6, no. 61; PUF1, no. 42 (JL, 8822), 55; PUF8, no. 22 (JL, 8624), 24 (JL, 8671), 41 (*PL*, Eugene III, no. 547; JL, 9661); PUF4, Nach. Gott., no. 17; PUS2, no. 47, 48, 52, 66, 67, 68; PUP, no. 51, 52; PU in

express basis of *ex parte* statements, that the delegate was to hear and examine the 'allegations,' 'accounts,' or the like of 'both parties,' or simply to summon both and then proceed 'with the truth of the matter having been fully learned' or 'inquired into.' A regard for 'fairness,' however, especially insofar as it would have served as an attraction to potential litigants, was evidenced in the papal letters most concretely and consistently in the procedural use of 'rational,' largely written, evidence.

R. Van Caenegem summarised that between 1100 and 1200 the older modes of judicial proof which had for centuries prevailed in Europe underwent a crisis leading ultimately to their disappearance. The old system he characterised as 'primitive or irrational or mystical,' giving pride of place to ordeals, compurgation with oath-helpers, and the like as means of asserting rightness or wrongness, innocence or guilt. An appeal to the supernatural had in fact been basic to both secular and ecclesiastical court practice, and these means of proof were administered by the clergy as *sacramentalia* along with the appropriate liturgy. These practices came increasingly under attack from various quarters in the course of the twelfth century, beginning to give way to more 'rational' means of proof predicated upon human enquiry and reasoning: primarily, the hearing of witness evidence and the inspection and analysis of written documents. Nevertheless, Van Caenegem was careful to stress that despite advances towards a more thoroughly 'rational' judicial procedure by the mid-twelfth century, vestiges of the 'primitive' systems of proof persisted into the second half of the century.[1] In fact, he noticed, the sources available suggest that up to the first half of the twelfth century inclusive, the old system as such was neither under attack nor rejected out of hand. For the litigant at the papal court by at least the middle of the twelfth century, however, it is demonstrated by the papal evidence that such vestiges had been largely erased.

To begin with, throughout the remainder of the twelfth century there appears to have continued at the curia a tendency to prefer compromises or settlements to causes rather than judicial decisions or sentences,[2] which, according to Van Caenegem, was 'a widespread characteristic of primitive justice.'[3] As for the papal letters themselves of the period 1143-53,

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Ligurien, no. 1 (*IP* 6/2, 382/1); PU in Campanien, no. 10 (*IP* 2, 147/4); PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); PU in Turin, no. 13 (*IP* 6/2, 174/14); PU in Padova, no. 3 (*IP* 7/1, 315/6); PU in Pisa, no. 4 (*IP* 5, 62/213); *Antiquitates* 3, 1167 (*IP* 3, 326/32); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45); Archives de l'Orient latin 2, 253, no. 1 (JL, 9165); *Historia monasterii S. Augustini Cantuariensis*, 403-04, no. 31 (JL, 8990); Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4), 9 (*IP* 5, 464/20); Nachträge zu den PU in Italiens 9, no. 7 (*IP* 7/1, 239/25; P-H *Iter*, 246; JL, 9668); Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256); see also, Archives de l'Orient latin 2, 255, no. 4 (JL, 9241).

[1] See, R. Van Caenegem, *Evidence*, 297-310.

[2] See, ch. 6.4.

[3] R. Van Caenegem, *Royal Writs*, 42; also, J. Sayers, *Judges Delegate*, 239. It should be remembered that Anacletus' party leaned on the weight of evidence in the disputed papal election of 1130—Bernard of Clairvaux's on personal virtue and God's choice; see, in particular, M. Stroll, *Jewish Pope*, 82-101; H.V.

however, it is not always possible from their context and language to discern precisely the extent to which causes were being brought to a resolution or end, or specific terms were stipulated or reached, purely through compromise or settlement, on the one hand, and the actual award of a judgement or a verdict, on the other. The distinction between judgements and settlement seems to have been made clear in at least seventeen letters which instructed judges to terminate a cause 'with a judgement or concord,' or enunciated that it was the pope's purpose to terminate causes thus.[1] Two letters similarly ordered a prelate to 'undertake no judgement or pact' with regard to a certain cause.[2] A single *arenga* however confused the actions, stating that 'things which have been terminated with the truth and concord of a judgement ought to be commended to memory lest in future they are able to be disturbed by the ill-designs of the wicked;'[3] while another stated that it was confirming 'the same sentence or concord.'[4] In the same way, papal commissions to judges delegate often instructed them broadly to 'administer justice (*facere iustitiam*)'[5] or to bring a cause to a 'due' or 'canonical end (*finis*),'[6] for instance. Broadly, one can conclude that some at least mixed form of settlement or compromise was prevalent, whether in procedure or upon judgement. The primary concern appears to have been the termination of causes, by whichever means recommended themselves most efficaciously under the prevailing circumstances.

More significant was the modes of proof or evidence admissible in procedure, wherein again, as Van Caenegem stressed, the 'old' systems, while increasingly under attack, lingered

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White, *Gregorian Ideal*, 336-48.

[1] See, *PL*, Lucius II, no. 79; *PL*, Eugene III, no. 25, 541; *APRI* 2, no. 379 (JL, 8571); PUE2, no. 69 (JL, 9546); PUF4, 63 (JL, 9378); PUF1, no. 42 (JL, 8822); PUF3, 33; PUF2, no. 46; PUP, 46; Archives historiques du Poitou 2, 33-34, no. 21 (JL, 8842); Archives historiques du Poitou 3, 9, no. 6 (JL, 8528), 9, no. 7 (apparently not in JL); Archives de l'Orient latin 2, 253, no. 1 (JL, 9165); Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256), 20 (*IP* 8, 180/260), 21 (*IP* 8, 181/261).

[2] *PL*, Eugene III, no. 38, 39.

[3] Appendix 1, no. 140 (*APRI* 3, no. 55 [JL, 8515]).

[4] *APRI* 1, no. 218 (JL, 9176).

[5] See, e.g., *PL*, Celestine II, no. 20, 23; *PL*, Lucius II, no. 14; *PL*, Eugene III, no. 11, 36, 38, 59, 123, 134, 135, 145, 146, 243, 246, 255, 266, 280, 386, 393, 403, 423, 425, 447, 459, 460, 468, 469, 472, 474, 475, 486, 504, 533, 555; *IP* 8, 179/252 (P-H Iter, 236; JL, 8655); *EPRI*, no. 188 (JL, 8554), 189 (JL, 8555), 197 (JL, 8955), 198 (JL, 8954); PUE2, no. 36 (JL, 8625), 73 (JL, 9503); PUE1, no. 50 (*HP*, 88; JL, 9513); PUE3, no. 71; PUF6, 56, 61; PUF5, 60; PUF2, no. 27, 32, 41; PUF7, 66; PUF8, 39 (JL, 9637); PUF6, Nach. Gott., no. 11 (JL, 8542); PUS2, 57; PUTJ, 17; Nachträge zu den PU in Italiens 9, no. 6 (*IP* 7/1, 239/24; JL, 9333); Cartulaire de l'église Notre-Dame de Paris 1, 27, no. 6 (JL, 9073) (see, 28-29, no. 8); PU in Florenz, 12 (*IP* 3, 138/12); Le bolle pontificie, Montecassino, no. 20 (*IP* 8, 180/260), 21 (*IP* 8, 181/261); Archives de l'Orient latin 2, 253, no. 1 (JL, 9165), 253-54, no. 2 (JL, 9166); Wibald, 354 (JL, 9521); *Chronicon monasterii de Abingdon* 2, 200 (JL, 9100); Archives de l'Orient latin 2, 255, no. 4 (JL, 9241).

[6] See, e.g., *PL*, Celestine II, no. 25, 44, 46; *PL*, Lucius II, no. 40, 43, 70; *PL*, Eugene III, no. 18, 72, 76, 82, 127, 152, 209, 324, 350, 358, 395, 431, 487, 512, 527, 541, 543; *IP* 5, 278/7; *APRI* 2, no. 380 (JL, 8632), 382 (JL, 8654), 383 (JL, 8659); *APRI* 3, no. 80 (*IP* 6/1, 254/13; JL, 8960); *EPRI*, no. 202 (JL, 9237), 213 (JL, 9733); PUE3, no. 49, 79 (JL, 9547), 82, 90; PUE2, no. 64 (JL, 9433), 71 (JL, 9591); PUE1, no. 29, 45; PUF2, no. 70; PUF1, no. 42 (JL, 8822); PUF5, Nach. Gott., no. 17; PUS1, 61; PUS2, 56 (JL, 8934), 67, 68; *Decretales*, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506); Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256); Nachträge zu den PU in Italiens 9, no. 7 (*IP* 7/1, 239/25; P-H Iter, 246; JL, 9668). For occurrence in the *arengae*, see, Appendix 1, no. 240, 256, 257, 260.

throughout the twelfth century.[1] The *Decretum* itself attempted no reconciliation of the conflicting authorities it cited on the subject of ordeals, leaving, in Van Caenegem's words, 'an unfinished impression,' while reflecting 'the ambiguous attitudes of [its] day towards the ordeals.'[2] Subsequent canonistic thought accordingly remained hesitant in banning ordeals outright.[3] At the end of the twelfth century the theologians at Paris, centred around Peter the Chanter, campaigned vigorously against it, paving the way for the canon of the Fourth Lateran Council abolishing its procedure.[4] But, as J.W. Baldwin noted, even Peter the Chanter early on was not unequivocal on the subject as he understood that Eugene III himself had permitted duels on the basis of custom. In fact, Gregory VII, Eugene III, and Alexander III all permitted ordeals in special instances, Baldwin found, while Innocent III himself, prior to the Fourth Lateran Council, remained ambivalent on the subject. Still, on the whole, he maintained, despite exceptions, these popes were personally unfavourable to such practices.[5] And, as such, no allusion to ordeals has survived in the papal letters of the period 1143-53.

References to oath-helpers or takers, as *fideiussores*, on the other hand, appeared in at least four separate papal letters of the period. In the first three of these letters, the method was clearly deprecated;[6] and the general tendency appears to have been to eliminate the sanctioning of *fideiussores* in ecclesiastical business. In a single instance, on the other hand, the use of *fideiussores* was officially sanctioned in a letter (ca. 1150-52) sent to the papal vicar Cardinal-bishop Conrad of Sabina and all of the clerics of Rome, concerning the 'raptors of churches,' specifically stipulating the provision by malfeasants of *fideiussores*.[7] At least four further letters, on the other hand, clearly indicated, in papal procedure, the persistence of compurgation.[8] The *Decretum* of 'Gratian' devoted the fifth question of *Causa II* to the matter of the appropriateness of a clerical *purgatio*, which it generally proscribed; none of this *questio*, however, was included

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[1] See, R. Van Caenegem, *Evidence*, 297-310.

[2] While the cardinal Robert Pullen wrote that certain clergymen thought that all ordeals should be abolished, authorities such as Ivo of Chartres and 'Gratian,' it has been said, were of a different mind. Bishop Ivo was clearly critical of ordeals, yet ultimately he accepted their necessary nature on account of the shortcomings of human modes of enquiry. R. Van Caenegem, *Evidence*, 308-09; also, F. Courtney, *Cardinal Robert Pullen: An English Theologian of the Twelfth Century* (Rome, 1954), 242.

[3] As late as the pontificate of Innocent III people were still trying to settle arguments with force, and trial by combat and by ordeal were still in use. King Philip II Augustus of France would even require the ordeal in his charter of 1200 granted to those very scholars of Paris. J.W. Baldwin, *Masters*, 323-32.

[4] Ecumenical Councils 1, 230-71 (Mansi 22, 979-1068), Fourth Lateran Council, c. 18 (here at, 244); see, J.W. Baldwin, 'The Intellectual Preparation for the Canon of 1215 against Ordeals,' *Speculum* 36 (1961), 613-36; J.W. Baldwin, *Masters*, 323-32; R. Van Caenegem, *Evidence*, 307-10; J.C. Moore, *Innocent III*, 296-97, 323-32. The Fourth Lateran legislation had an immediate effect on legal practice in England, Normandy, and Denmark, where unilateral ordeals were removed from the common law. J.W. Baldwin, *Masters*, 332.

[5] J.W. Baldwin, *Masters*, 328-29.

[6] *PL*, Lucius II, no. 11; *EPRI*, no. 197 (JL, 8955); PUKHL, no. 63 (PU in Malta, 3).

[7] *PL*, Eugene III, no. 463/545 (*Decretales*, Gregory IX, Bk. 5. XVII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4; JL, 9508/9656).

[8] *PL*, Celestine II, no. 25; *PL*, Eugene III, no. 362, 366, 387.

in the first recension of 'Gratian I.'[1] Thus, at the beginning of 1144 Celestine II wrote to the abbots of Hirsau and Ebrach that since a certain brother who had been elected to the abbacy of Lorsch had been 'defamed concerning the crime of simony in our presence,' he ordered them, 'if the persons who canonically assail him concerning the simony should appear, having summoned both parties to your presence, at a fit time and place, to hear diligently the cause and terminate it with a canonical end; otherwise, the same brother should purge himself concerning so great a crime with the hands of five religious persons.'[2] In practice, therefore, while there is some evidence that certain vestiges of 'primitive' modes of proof persisted, on a very minor scale, into the period 1143-54, these were only isolated cases which belied an overall reliance in procedure upon written documents and witness testimony as modes of evidence or proof.

According to J. Sayers' analysis of cases of papal delegation in southern England in the first decades of the thirteenth century, an analysis based largely on the more detailed episcopal *acta*, witness accounts held first rank at the delegated courts in procedure, over written testimony.[3] For trials pursued at the curia this was, from a practical standpoint, far less feasible; and the record indicates that witness testimony occurred far more rarely: the term itself, 'witness (*testis/testator*),' as in reference to an actual witness, appeared in at least forty-five distinct letters; only twenty-five of these also concerned clerical *controversiae* (4.9% of the total letters concerning clerical controversies).[4] And in total the term appeared in only seventeen letters concerning papal judges delegate (excluding members of the curia) (twelve percent of the total such letters).[5] The indication of written documents as evidence in procedure, especially papal documents, on the other hand, was consistent and pronounced. In this way, in a culture of growing literary skill and appreciation for written records, perhaps the greatest advantage which papal

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[1] See, Gratian, *Decretum*, C. 2 q. 5; also, A. Winroth, Decretum, 207.

[2] *PL*, Celestine II, no. 25.

[3] See, J. Sayers, *Judges Delegate*, 42-99, esp. 86-90.

[4] *PL*, Celestine II, no. 46; *PL*, Eugene III, no. 36, 37, 72, 127, 201, 453, 487, 512; *IP* 6/1, *339/1; *IP* 6/2, *378/16, *378/17; *APRI* 3, no. 75 (JL, 8916), 94 (JL, 9478), 95 (JL, 9480); PUE3, no. 79 (JL, 9547), 90; PUE2, no. 64 (JL, 9433); PUF5, no. 69 (JL, 8823), 76; PUS2, no. 68; *EPRI*, no. 202 (JL, 9237); PU in Padova, no. 3 (*IP* 7/1, 315/6); PU in Pisa, no. 4 (*IP* 5, 62/213); Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4). For the other twenty occurrences, *PL*, Lucius II, no. 10, 56; *PL*, Eugene III, no. 546 (*Decretales*, Gregory IX, Bk. 2. XX. 5; JL, 9657); Theiner 1, 13, no. 15 (*APRI* 2, no. 377), Theiner 1, 14, no. 16 (*LC*, 402-03, no. 123; *Antiquitates* 4, 37-38; *IP* 2, 204/2), Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45), *LC*, 384-85, no. 96 (*Antiquitates* 2, 559-60; *IP* 2, 207/2); *LC*, 384, no. 95 (*Antiquitates* 2, 559-60; *IP* 2, 207/1), *LC*, 383-84, no. 94 (Theiner 1, 14, no. 17; *IP* 2, 207/3), *LC*, 382-83, no. 92 (Theiner 1, 14-15, no. 18; *Antiquitates* 3, 777-78; *IP* 1, 187/5), *LC*, 383, no. 93 (*Antiquitates* 3, 779; *IP* 1, 192/2), *LC*, 403-04, no. 124 (*Antiquitates* 4, 241-42; *IP* 3, 482/1), *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14); PUF7, no. 56; PUF6, no. 61; PU in Nonantola, no. 3 (*IP* 7/1, 298/1; P-H *Iter*, 238; JL, 8701); *EPRI*, no. 190 (JL, 8612); PU in Turin, no. 13 (*IP* 6/2, 174/14); Nachträge zu den PU in Italiens 8, no. 4 (*IP* 6/2, 230/3); Nachträge zu den PU in Italiens 9, no. 5 (*IP* 7/1, 298/2; JL, 8737). See also, *HP*, 80-82 (*IP* 8, *46/175; *IP* 9, *172/1).

[5] *PL*, Celestine II, no. 46; *PL*, Lucius II, no. 10, 56; *PL*, Eugene III, no. 36, 37, 72, 127, 453, 487, 512; *IP* 6/1, *339/1; PUE3, no. 79 (JL, 9547), 90; PUE2, no. 64 (JL, 9433); PUF5, no. 69 (JL, 8823); PUS2, no. 68; PU in Pisa, no. 4 (*IP* 5, 62/213).

justice offered supplicants and litigants was the advanced and efficient state of its chancery, as well as its own appreciation for all written evidence as essential means of proof.

It is a commonplace to point out that the papal chancery in the second half of the twelfth century was one of the most sophisticated and busy writing offices in Latin Christendom.[1] M.T. Clanchy divined a multiple of 100 for predicting something closer to a real estimation than the actual extant output of the chancery of Henry I of England. Applied to the papal record, such a multiple would give us about 1,723 papal documents issued per month in the period 1143-53. Applying the same factor to the number of extant letters of this period classified under 'clerical controversies' increases that number to about 438 per month, or nearly fifteen every day.[2] Such speculative calculation is at best conjectural, and in this case probably inaccurate. Yet, it is worth querying whether such figures, or even significantly smaller ones, would comport with that great flood of litigation which Bernard of Clairvaux had rued and cut him to the quick. It would seem to. In any event, it remains that the papacy in this period was one of western Europe's leading document-producing and preserving institutions, not only in terms of sheer capacity of production and the sophistication of administration, but also in terms of style and diplomatics, especially with the development of the papal *cursus*, which was approaching the high-water mark of its development in the Middle Ages.[3]

R. Van Caenegem, in his article on the rise of rational evidence in the twelfth century, stressed that that century 'saw the birth or the rebirth of bureaucratic government,' that is, the rise or the expansion of chanceries, producing an 'immense advance over the previous age' in the amount of written documents leaving the central offices of Church and state. This process of increasing use of writing, he noted, was not confined to the sphere of administration but affected the practice of the law courts, especially in the rise of written evidence. What had been merely a trickle in previous centuries became an increasingly important and swelling stream in the course of the twelfth century: 'Soon people were putting their contracts in writing, preferably in the form of authentic instruments which would have to be accepted by the courts without preliminary discussions and without the admission of witnesses to the contrary. In spite of the saying of Innocent III that the voice of living men was worth more than the hide of a dead beast, parchment and seals were to be supreme in the law courts.'[4] As far as the papal record at mid-century suggests, his conclusions seem to have simplified the matter, as documents, in procedure, were never always taken purely at face value; their admission in procedure did not go unscrutinised; and there was always a potential for conflicting written claims. Oral testimony besides was never

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[1] See, ch. 1.1.
[2] C.R. Cheney, *Innocent III and England*, 97, speculated that of all lawsuits surviving for England in the pontificate of Innocent III, 'two-third of the letters concerning such business may be lost without trace.'
[3] On this, see especially, R.L. Poole, *Medieval Chancery*, 76-97.
[4] R. Van Caenegem, *Evidence*, 302-04.

thoroughly minimised. He was broadly correct, however: written documents played a paramount role in papal legal procedure; and the chancery's production of written instruments and deeds appears to have played a primary role of the papal office generally.

A solicitous concern to preserve or confirm in writing acts which somehow came under the purview of the papacy rang out in the *arenga* statements of the period 1143-53.[1] In numerous examples, in confirmations of judicial and other acts, the popes declared, for instance: 'The definitions of causes and the concords of controversies are commended to authoritative letters on this account, lest they are removed from the memory of posterity.'[2] Similarly, beyond the mere production of written documents, their use as forms not merely of authentication of new acts but as instruments in procedure, litigation, and of proof and testimony of all sorts dominates the papal record of this period: the use or indication of written documents, especially papal, were everywhere in the letters. Thus, the pope would commission a judge delegate, 'at a fit place and time, having summoned both parties before your presence, to give attention diligently there and then to the accounts, instruments, and allegations and with all fairness impose a due end upon the same controversy.'[3]

In more elaborate cases, in May 1146 Eugene III wrote to the canons of the church of S. Maria Maggiore, Vercelli on account of their controversy with the canons of S. Eusebio over the quarter part of the *districtus* of Carisiana. Both parties, it was noted, had convened on the terminus fixed for them and, through their advocates, put forth their cause in the pope's presence and that of his brethren. The provost of S. Eusebio and certain of his brothers 'put forth their allegations with the assertion of certain witnesses.' The canons of S. Maria, to the contrary, and denying their allegations completely, publicly and similarly adduced certain witnesses who put forth that their church had 'quietly held the district of the aforesaid quarter part for thirty years.' Further, in effort to add the *constantia*, it was said, of Innocent II to their assertions, Eugene reminded the canons, 'you said that the same quarter part has been adjudicated for you through a definitive sentence, and for the purpose of a greater authority you displayed to us the privilege of our same predecessor by which it would have been confirmed for you.' Therefore, the letter concluded, 'we, recognising the truth of the matter through certain of our brothers who had taken part in the same business and from the aforesaid privilege, have adjudicated the quarter part of the aforesaid district of the *curtis* through a definitive sentence for you and your church, and have imposed perpetual silence upon the canons of S. Eusebio over this.'[4] The letter is informative with regard to the use of papal privileges and confirmations combined with witness testimony. In this

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[1] See, Appendix 1, no. 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 249, 251, 254, 256, 257, 261; see also, J. Sayers, *Judges Delegate*, 243, 264.
[2] Appendix 1, no. 142 (*PL*, Eugene III, no. 292).
[3] PUE3, no. 49.
[4] *APRI* 3, no. 75 (JL, 8916).

case, the papal privilege was genuine, acting as a deed of sorts, and conclusively settled the matter, corroborated by the older cardinals who attested to its genuineness.

A month earlier Eugene had written to the bishop of Ferrara that the archbishop of Ravenna, 'coming to our presence, has complained that you are violently and unjustly detaining the *villa* of Firminiana with its parish, which is known to pertain to the rights of his church, and although you have been warned frequently about this by our predecessors you contemn all the way up to now to provide him justice.' The pope, unwilling to deny the archbishop his justice 'through unreasonable delays,' thereby ordered the bishop to restore the *villa* with its parish to the archbishop or, 'when you will have been summoned by our esteemed son G., cardinal-priest, without any evasiveness (*occasio*), proceed to his presence and receive, without the subterfuge of appeal, and irrefragably observe whatever will have been enacted by him over this.'[1] Years later, however, the case was re-appealed to the pope who addressed to the archbishop of Ravenna in June 1152 a lengthy and detailed description of the trial and its decision, which the pope was providing because 'that which will have been adjudicated or decided over the suits of causes ought to be commended to the memorandum of a writing.' A recapitulation of the case's procedural elements at the curia thus followed. The archbishop, it was narrated, publicly adduced a privilege of a 'former Pope Leo,' attesting that the *villa*, or patrimony, 'with the parish and churches and with all divine and human rights, would have been committed to [the archbishop] by the same pope,' along with 'another privilege of the emperor Charles, through which as much the aforesaid patrimony expressly as the other possessions of [his] church would have been confirmed.' The archbishop further confirmed 'the longest possession' for himself through certain acts, or *gesta*, of former archbishops of Ravenna, 'in which much concerning the disposition of the patrimony itself was read.' He 'further offered forth a certain public instrument in which concerning the aforesaid patrimony very many leases and concessions made by the same archbishops were read.'

Indeed, the archbishop's entire case appears to have rested on the weight and stock-pile of instruments—papal, imperial, and episcopal—which were all dully admitted and apparently accepted as sound. In the face of this evidence, the bishop of Ferrara objected on the basis of a past settlement, firmly responding that he, in the presence of the now deceased Cardinal-bishop Guido de Summa of Ostia—who had apparently been the cardinal-priest and legate referred to in the letter of 1146 (he was cardinal-priest of S. Lorenzo in Damaso between 1143 and 1149)—had undertaken a settlement or transaction (*transigere*) with the archbishop over the patrimony itself and claimed that by the force of this, if the archbishop was holding any action against him, it should be fully quashed. The archbishop in turn firmly alleged that that settlement (*factum*) should not be able to stand *de jure*, because a legal transaction required the consent of both parties. For,

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[1] PU in Pisa, no. 2 (*IP* 5, 61/204).

'with regard to this transaction (*factum*), however,' the pope recounted, 'you said that your consent had by no means been given, since just how much was actually going to accrue to you, or that you were even agreeing to a settlement of the suit, you had been fully ignorant of until he who had been the ordinary judge publicly disclosed it to both parties by his arbitration.[1] And after you heard this, you by no means ratified it.' The archbishop also added that if he indeed had offered assent, since the *conscientia* and consent of his clergy serving the church of Ravenna would have been wanting, it still would not be able to stand *de jure*: 'For, the laws decree nevertheless that the alienation of ecclesiastical property, to which the major part of the college is not agreeing, is by no means valid, and you firmly responded that transactions cause alienations.'

At this point then the case appears to have become fairly complicated, as both parties pleaded on the basis of certain legal technicalities. The suit had originally been submitted to the cardinal legate (ca. 1146), who, significantly, the pope explicitly referred to as the 'ordinary judge.' The archbishop of Ravenna, however, dissatisfied with his arrangement, had refused consent. Ferrara, nonetheless, contended that an arbitrator's decision was always binding, and could not be appealed from. Ravenna contended that, even if he was personally bound to it, the settlement, in any event, would have constituted an alienation, which required the consent of his clergy. This last motion appears to have had some effect, as the letter noted that Ferrara then turned to the authenticity of the evidence of the archbishop's instruments: 'The aforesaid bishop of Ferrara said that with regard to your privileges which we have fully accepted, not only in the terms of the privilege and bull had it been written *Leoni* in place of *Leonis*, but that also in the bull itself certain contusions were apparent. The privilege also of Charles he called into doubt on account of this, because it had been subscribed against the custom of those kings of the purple, and had not been embossed with gold or wax, but with lead.' These arguments apparently had little effect on the court as the bishop next brought forth his own documentary evidence. But he was only able to adduce a mere copy, or *exemplar*, of a certain bull of a certain Pope Adrian, in which the aforementioned patrimony was conceded to the church of Ferrara, claiming that he had lost the original, or *authenticum*. But, he proclaimed, he would be able to prove that he once in fact had possessed the original through witnesses who had already pledged to attest to having clearly 'heard' it and to affirm that the same things which were read in the copy itself were in the original. 'Nevertheless,' the pope added, 'which witnesses he has by no means presented before our sight.' Nevertheless, the bishop also adduced a certain papyrus scroll, or '*thomus*, written under the name of Pope Leo, supported neither with a public hand nor the impression of his seal, which no one, although much labour would have been expended with regard to it, was able to read satisfactorily.'

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[1] *In hoc autem facto consensum tuum nullatenus intercessisse dicebas, quoniam quod tibi vel quantum de litigio ipso cessurum erat, penitus te ignorasse dixisti, donec ille qui iudex ordinarius fuerat utrique parti suo arbitrio publice patefecit.*

The bishop thereupon 'also proffered privileges of Benedict, Paschal [II], Innocent [II], Lucius [II], and Celestine [II], Roman pontiffs, which all said that they are following the trail of the aforesaid Pope Adrian. He further alleged possession of the oft-mentioned patrimony, as it had been conferred upon the church of Ferrara by Otto Buccatorta, forced into the church of Ravenna through imperial violence, and said that he had quietly possessed it from then on for the space of forty years and more.'

The archbishop of Ravenna himself then countered 'by responding that the act of the intruder Otto has not been able to deprive the church of Ravenna of its rights, because it had been done for certain without the joint knowledge and consent of the same church against the statutes of the canons and laws.' He 'added also that in the giving away of churches, with money given and received, simoniacal heresy would have been committed by him giving and by him receiving, and because of this, for no extent of time, even if it had not been done with any canonical interruption, has the concession itself been able to obtain firmness.' In the end, apparently none of Ferrara's claims or evidence stood up, and the pope informed the archbishop of Ravenna:

> Truly, you have proven with witnesses, against the prescription of the longest duration of time, that your predecessor...had complained in the sight of...Pope Calixtus [II], in the Lateran Council, over the same patrimony, with [the former] bishop of Ferrara present. We have also learned for certain that you yourself had also done this in the sight of Lucius [II] at the time of your ordination, and had impetrated apostolic letters to [the current] bishop of Ferrara so that he would submit to a judgement over the patrimony itself with you under the patriarch of Grado. Therefore, we, having diligently inspected and fully understood the allegations and accounts of both parties, have adjudicated, with the counsel which has been communicated by our brethren, and with justice leading the way, that whatever in the aforementioned patrimony the bishops of Ferrara once possessed as much in possessions as in churches or their appurtenances through themselves or through others, with no question reserved, should be wholly restored to you and through you to the church of Ravenna.

An anathema closed the document: 'Therefore, let it be lawful for entirely none of mankind to infringe or disturb with any molestations whatsoever with temerarious audacity the page of this our definition...'[1] On the same day, another papal letter was sent out to all of the clergy and populace of the same *massa*, Firminiana, under contest, absolving them from obedience to the bishop of Ferrara, and ordering them instead to furnish due obedience and reverence for the archbishop of Ravenna 'as their lord and proper pastor as devout and humble sons.'[2]

A week later Eugene wrote to the abbess of S. Giulia, Brescia opening his letter of judgement with a pointed declaration of the function of the papal office: 'For this we sit through the arrangement of the Lord before others on the seat of justice, so that, safeguarding for every church and ecclesiastical person their own justice, if any dissent should arise between them, we might terminate it with a due end.' A controversy between the abbess and bishop of Cremona over certain churches had originally been committed, 'to the petition of the same bishop,' to Bishop Aribert of Reggio Emilia. This was the only direct indication in the letters of this period that

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[1] PU in Pisa, no. 4 (*IP* 5, 62/213); also, *IP* 5, *60/202, *60/203, *62/212.
[2] PU in Pisa, no. 5 (*IP* 5, 63/214).

litigants themselves were as yet allowed a part in the process of the selection of particular judges delegate. Apparently, however, the bishop of Cremona had been dissatisfied with some part of the outcome of the delegate's court—whose judgement, it was noted, had been reached with the counsel of legal experts—and re-appealed to the pope. At the papal trial, and in the course of reviewing the various briefs and documents transmitted by the judge delegate, 'under his own seal,' the curia discovered that part of the judge delegate's original sentence had been passed in violation of the terms of S. Giulia's own papal privileges. Curiously, then, the bishop of Cremona had appealed apparently against the sentence of a judge delegate whom he had personally requested, suggesting, in this instance anyway, that any procedure of petitioning for specific judges did not always benefit the petitioner. Furthermore, the procedural insight provided here is informative in the case of an appeal of a delegate's sentence in the indication that provincial judges were transmitting full dossiers to Rome by which the cause would proceed.

In any event, the papal letter then quoted directly, and *in extenso*, several clauses which had been read in a privilege of Pope Paul I (757-67). The inclusion of full and verbatim quotations from any privilege much less one of such antiquity was unique for any letter or privilege of period 1143-53. In this particular case, this was probably at least partially the result of the antiquity of Paul's privilege of which a copy had clearly been at hand, as the letter stated rather plainly. Probably, the copy had been amongst those documents transmitted to the curia by the bishop of Reggio Emilia, or else brought by the party of the abbess, and had not in fact been retrieved from the papal registers. However, the fact that the privilege had apparently not come to bear on the delegate's original sentence, and the sentence in fact was re-appealed to the curia not by the party of S. Giulia but by the bishop of Cremona, would suggest otherwise, unless the party of S. Giulia itself had simply been content with the initial ruling of the delegate. Furthermore, it is known that the privilege of Paul I, or parts of it, had been renewed by Eugene III himself nearly four years earlier on 8 September 1148. But only a single clause quoted from Paul's privilege in the letter of 1152 actually was included in the renewal of 1148.[1] And for whatever reasons the privilege of Eugene III was not mentioned at all in the letter of 1152 and apparently had little or no bearing on the papal verdict in the case. Nevertheless, the letter of 1152 provided the only indication in any of the papal letters of the period 1143-53 of a controversy which turned upon the interpretation of papal privileges of protection and their exemption clauses and the question of how those affected the jurisdictional relationship between a bishop and monastic churches. In any event, the same letter closed by pronouncing the papal verdict with very specific terms: 'Therefore, wishing to recall to a standard of rightness that which is contained in the aforementioned sentence against the privileges of the apostolic see, just as we have stated above, having diligently inspected the

[1] *PL*, Eugene III, no. 317.

privileges, having judicially heard and examined the allegations of both parties, having repeatedly thoroughly examined the attestations, with the counsel which has been communicated by our brethren, we have adjudicated that in the church of Cicognaria, in accordance with the terms of the privileges, the priest should be elected through you [the abbess] and placed in the same place.'

After specific terms regarding the provision of that priest, the verdict then stipulated that all of the men, living or dying, from four specified *villae*, excepting five families stipulated by name, 'should go to the aforesaid church of Cicognaria for the purpose of receiving all of the *spiritualia*.' Furthermore, a group of residents, again specified by name, from another *villa*, that of Barcello, 'should be buried in the same church of Cicognaria.' However, 'both they and the remaining men of the same *villa* should go to the church of Fossa Capraria for the purpose of receiving the remaining divinities. The church of Cicognaria should always possess the quarter part of the tithes, just as it has held hitherto. Also, we have adjudicated that the edifice which has been constructed under the name of a church against the sacred canons...within the parish of Cicognaria, to the detriment of the old church, should be completely destroyed.' However, the verdict allowed, 'if the necessity of the men of the *villa* of Barcello should demand it, we permit the bishop of Cremona to build a church between the same *villa* and Fossa Capraria beyond the parish of Cicognaria. Therefore, lest it should come to pass that the parishes are confused, we have enacted with the present decree, with the authority of the apostolic see, that whosoever from the aforesaid parishes should transfer his home from one to the other should receive all of the divinities from that church in whose parish he should be ascertained to have transferred his home.'[1] In sum, the case demonstrated—as the letter itself stated plainly enough—the great weight or effect of papal documents, however old, in the process of pleading and adjudication at the curia. At the same time, it was suggested that the same weight, or at least the skill in utilising those documents, was not always found in the ecclesiastical courts of the provinces. The detail of the letter also pointed out the potential concern of the curia in this period for meticulously substantiating in writing the authorities upon which a difficult sentence was based as well as the precise nature of that sentence. At the same time, that sentence demonstrated the extent to which the curia did frequently involve itself in litigation in the most minute even petty arrangements between churches, and the boundless competition which compelled those churches to engage in protracted and costly litigation at Rome for what could only have been relatively petty interests. In any event, those churches would pay to have those interests confirmed with precise language in papal documentation.

Again, however, it was not merely papal documentation which formed the basis of evidence in proceedings at the curia. Thus, in another informative case-study, in September 1147

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[1] *PL*, Eugene III, no. 512.

the pope issued a detailed letter of justice to the abbot of Fleury (St. Benoît-sur-Loire) and his successors settling the abbot's longstanding suit with the nobleman Iterius of Toucy over a certain *villa*. This particular case, though not properly a clerical controversy, nonetheless demonstrated the potential of laymen litigating at the curia, in this case as a defendant. The letter noted that although the nobleman in question had several times received summonses or deferments (*indutiae*) from the curia, and the abbot, kept meanwhile in suspense, had to toil at the curia 'in long and wearying anticipation,' at length both parties convened before the pope. At that point, the abbot put forth a complaint against the same Iterius that he, in addition to various other unspecified offences, had not only been imposing new and undue exactions upon the men of the aforesaid *villa*, which the abbot alleged to pertain to the rights of his monastery, but had revoked those which his father, Nariotus, nearing death, had renounced for the well-being of his own soul. On the surface, the fact that the layman in question had received multiple summonses or even deferments was perhaps illustrative of the potential difficulty which any *auctor*, but perhaps especially a layman who might not have possessed either the same disposable means as a clerical house or the opportunity to visit the curia, might have encountered in bringing his defence the thousands of kilometres from the Île-de-France to Rome. At the time of the dating of this particular letter, however, the curia was sojourning in France; and only three days earlier a papal privilege had been dated from Auxerre, lying in the shadow of Toucy itself. As such, it appears that the nobleman in question was at length brought to trial only because of the immediate accessibility of the curia, or the immediacy of its threat, as *indutiae*.

In any event, the case was ultimately pleaded; and the proceedings, again, turned upon the documentary and witness evidence of both sides. Thus, for the purpose of fortifying his cause, it was stated, the abbot publicly produced a writing of the former bishop of Auxerre, establishing that the customs which the lords of Toucy had maintained in the disputed *villa* had been legally renounced. For this, the party of the current lord had no defence, 'and that which he desired to demonstrate for the benefit of his cause he availed to strengthen neither through witnesses nor other means.' On these bases alone, the letter plainly stated, the pope, on the advice of his cardinals, issued judgement, the precise terms of which were thereby annotated: the aforesaid Iterius and his legitimate successors in the lordship of the *castrum* of Toucy 'should hold dues from those who should have holdings in the *villa*, concerning which the controversy was being pleaded, namely from every single dwelling a pint of oats with six *denarii* from the cartage service and two for the procuration of their servants and two hens; and if there will have been a half holding, more or less, in accordance with that which there will have been, the dues should be assigned to Iterius and his successors.' The cellarer and cook, furthermore, 'should have between them every year from every single holding one measure of the corn of the annual yield; moreover, when their representatives will have come for the sake of the retrieval of the dues, they will be

provisioned by the monk of the place itself in the early morning and they themselves will be obliged to provision the monk later in the day, with the mounted men and entire family, and early in the morning of the following day.' The intricacy of the details of the settlement and outline of the relationship between the parties, their agents, and the subjects or inhabitants of the contested place is remarkable.

Similarly, the letter continued, if 'the tenants of the same *villa* will have been summoned, all will go, every three years, for the purpose of garrisoning the *castrum* of Toucy, and if there will have been need, the aforesaid men, having been summoned, will come to the defence of the same *castrum* and castellan.' And in 'the holdings of the forest, which will have at length been improved as something new, may there be either more or less, and should the monk impose his customary *census* or not, in accordance with the quantity of the cultivated land, he who will have been the lord of Toucy at the time will hold the dues. Twenty *solidi* from the harbourage, which the predecessors of Iterius had given to others *in feodum*, should be returned to them.' Further, 'indeed, neither Iterius nor his own should hold in future the other harbourage from the monk or burghers or villains, unless for the sake of the needs of the church they will have been summoned by the abbot or provost of St. Benoît who will have been at the time in the *villa* of Cillaris; and so many men and no more should draw together, as many as ought to suffice for that, for which they will have been summoned.'

In sum, although in this case the documentary evidence used in proceedings was not papal, but episcopal, a seemingly new and comprehensive written constitution for the manorial governance for the contested place was being hashed out at the curia on the basis of, while replacing, the older and disparate instruments and customs of the parties. Thus, even the question of judicial jurisdiction was defined, as the letter further stipulated that 'concerning that which is called *ressort*, if it should come to pass that the monk should either be unwilling or unable to administer justice concerning the men of the *villa*, then as much Iterius as his successors should administer justice concerning them, otherwise, they should neither bring to justice anyone of the same *villa* on account of any cause on their account or on account of others nor should they further hold other customs in the same *villa* beyond all of those which are contained above.' And 'since it is certain that the place itself pertains to the lordship of the abbot and all of the rest consists in his power and that of his provost who will have been at the time through his own hand in the same place freely and without any contradiction, it is indeed unfitting that Iterius and his successors should have the power of defending through themselves or their own the same *villa* or its inhabitants against the abbot or monks.' Finally, this papal letter announcing and confirming a judicial sentence conveniently transformed itself into an authenticated deed, authenticated or enforced with the incantation of the curia's own singular anathema: 'Moreover, so that this might remain firm for all time, holding the writing of the aforesaid bishop, Humbald, ratified with

apostolic authority, we prohibit that it be allowed to absolutely any of mankind to assail or vex you with any molestations whatsoever over all of these.' The full anathema clause followed against 'any ecclesiastical or secular person' who, 'knowing the page of this our definition, should attempt to come temerariously against it...'[1]

Indeed, a cause or its procedural denouement could involve a rather bewildering array of disparate, and often times seemingly petty, details and objects. In May 1151 Eugene III wrote to the abbot and monks of the monastery of S. Andrea, Mantua that on account of their longstanding controversies with the archpriest and canons of Mantua 'over the use of the forest of Fornicata and over the possession of the church of S. Maria, Formigosa and over the churches of S. Lorenzo [and] S. Salvatore and over the tithing-right of the opened lands of the aforesaid forest of Fornicata, both parties have presented themselves to our sight, and have sufficiently set forth their legal claims, allegations, and testimony through prudent advocates.' All of these, it was noted, the parties had firstly and fully set forth in the presence of the bishop of Mantua, 'who then received the witnesses from both sides and sent the affidavits of the witnesses to us under his own seal. And all of these we have diligently heard and inspected, and have consulted long and hard with our brothers over these.' It is not clear if the case had been initiated in the first instance before the diocesan ordinary, or if it had been delegated to him; in either case, documentation of the proceedings, authenticated with the ordinary's seal, were transmitted to the curia for review and final sentencing. A lengthy and detailed settlement was thereby stipulated. Noteworthy among the terms of that settlement it was noted that 'the canons themselves further declare that on the vigil of the Ascension of the Lord they have been accustomed to go to your monastery and chant vespers, and with the evening lauds having been chanted in the same place the wine and drink ought to be furnished for them, adding also that on the following early morning, after the offices of masses will have been celebrated there, you ought to furnish a feast for them.' Accordingly, the pope, 'subtly giving attention to their assertion and your rebuttal, and understanding the merits of both parties, adjudicated that you should honestly bestow upon the canons on the vigil of the Ascension of the Lord the wine after vespers has been chanted, however, we have absolved you from the claim of the feast of the same festival, because we have learned that you are accustomed to give the feast itself on that festival only to the bishop and it has been returned to you by the bishop.'[2]

Again, it is remarkable that the highest judge of the Church was himself hearing testimony and attestations in the course of a sophisticated and elaborate legal and judicial process so as to pass sentence establishing if and when precisely in the course of a particular day a group of clerics should be served libations by another group of clerics. Nevertheless, in this case the sum result was that the curia was able to establish, in writing, a comprehensive, point by point jurisdictional

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[1] PUF6, no. 61.
[2] PU in Padova, no. 3 (*IP* 7/1, 315/6).

relationship—concerning the appointment of priests to the disputed churches and their governance, the roles of those priests with regard to the processions of the respective parties, and all funeral rites of the parishioners—between the two houses of regular and secular clerics on the basis of local inquiries undertaken, in this case, by the diocesan, and redacted in writing, and transmitted for inspection and subsequent adjudication. Indeed, overall, the medium of the papal judiciary had become largely literary by the mid-twelfth century; and for this reason potential litigants at the curia, as a matter of course, could hope to prove their rights on hard grounds and simultaneously re-confirm them through written decisions and other privileges. Furthermore, by emphasising the value of papal documentation in litigation, the papacy itself further ensured the demand on the business or production of its chancery, thus simultaneously assisting in paying for the system itself and reinforcing its own prestige and primacy.

7.3 FORGERY AND REGISTRATION

The adverse side to the increasing use of written documents in litigation was the potential of confronting forgeries. Forging documents was possibly one of the great clerical pastimes of the central Middle Ages, and from the last decades of the twelfth century at least the threat of confronting all kinds of forgeries in the judicial process seems to have become an everyday reality. Forgeries were even occasionally unwittingly authenticated by the curia itself or on account of the carelessness of curial officials, as perhaps they were surreptitiously presented for sealing among a budget of documents. Other times false claims were simply confirmed in legitimate papal documents through the falsification or suppression of facts at the curia—letters obtained 'surreptitiously,' but equated by Innocent III with forgeries. Armed with such documents, 'men could vex their enemies by merely threatening a lawsuit or by actually suing them.'[1] In either case, the reality of such fraudulent practices attested to the ardent pitch of clerical competition in the twelfth century, and the jealousy with which houses and clerics would seek to protect what they regarded as theirs by right, and the covetousness with which they sought to acquire what was not. Compounding the problem was the fact that some houses almost certainly clung to false documents without any fraudulent intent: many forgeries probably slipped into the tradition of a house's genuine instruments after untold years. More significantly, many if not most houses would have probably had legitimate claims to which they had no written title. Appropriation and depredation were rife in this period; and property rights were hazy to begin with: hence, in this era, the great proliferation of written records and thirst for papal titles which themselves in effect helped to delineate, clarify, and legalise property rights. Thus, many forgers were probably simply

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[1] C.R. Cheney, *Innocent III and England*, 111.

attempting to legitimise falsely rights to which they naturally had legitimate claims. The situation was encouraged by the general culture of clerical literacy, as well as a growing familiarity with official letter forms, including papal. Coupled with this was the growing use of law courts for pursuit of economic and political objectives, increasing the opportunities for and profits of such misbehaviour.

As a result of these things, papal legislation to prevent forgeries of papal documents would begin with Alexander III. Innocent III—under whom a ring of professional forgers was discovered, working apparently from the inside of the chancery—was particularly zealous in his efforts to militate against the use of papal forgeries. He was responsible for undertaking a general chancery reform, as part of which he attempted to institute reforms and innovative systems for the detection and punishment of forgeries and forgers, not just in the curia but, as so many cases were now being delegated to the provinces, in the Church at large.[1] Nevertheless, there was little indication that, half a century before Innocent's pontificate, the use and obtainment of false papal documents was already an acute problem for the curia and chancery. In fact, reference to any 'forgery,' or 'false writing,' occurred in only nine papal letters of the entire period 1143-53;[2] and

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[1] See, E.A.R. Brown, '*Falsitas pia sive reprehensibilis*: Medieval Forgers and Their Intentions,' *Fälschungen im Mittelalter* 1 (*MGH* Schriften 33: Hannover, 1988), 101-20; G. Constable, 'Forged Letters in the Middle Ages,' *Fälschungen im Mittelalter* 5 (*MGH* Schriften 33: Hannover, 1988), 11-38; C. Duggan, '*Improba pestis falsitatis*: Forgeries and the Problem of Forgery in Twelfth-Century Decretal Collections (with Special Reference to English Cases),' *Fälschungen im Mittelalter* 2 (*MGH* Schriften 33: Hannover, 1988), 319-62; C. Duggan, *Decretal Collections*, 40-41; R.L. Poole, *Medieval Chancery*, 143-62, 202-03; P. Herde, *Beiträge*, 79-129; P. Herde, *Römisches*, 323-35; H. Bresslau, *Handbuch* 1, 7-29, 40-43, 619, 637, 656-79; H. Bresslau, *Handbuch* 2, 29, 314-17, 361, 365, 445; S. Chodorow, *Dishonest Litigation*, 191-94, 203 n. 28; U.-R. Blumenthal, *Papal Registers*, 145-48; C.R. Cheney, *Innocent III and England*, 111-13; C.R. Cheney, *Becket*, 64; C.N.L. Brooke and A. Morey, *Foliot and Letters*, 124-46; R.W. Southern, *Western Society and the Church*, 92-93; W. Ullmann, *Growth*, 360.

[2] *PL*, Eugene III, no. 2; *APRI* 2, no. 396 (JL, 9396); PUN, no. 59; PUS2, no. 47, 48, 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934); PUE2, no. 71 (JL, 9591) ('the falsification of our letters'); see also, JL, 9297b ('false titles'); *EPRI*, no. 192 (JL, 8833) (a writing obtained *de surreptione*); Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256) (a letter obtained *falsis precibus*); PUF1, Nach. Gott., no. 31 (JL, 8832); *PL*, Eugene III, no. 13; *IP* 4, *71/26. And see for the case between the bishop of Lodi and the monks of Cerredo which turned upon a sentence written *testimonio fraude et dolo scriptoris*: JL, 8920; *IP* 6/1, *252/3-5, *253/6-8, *254/10, *254/12; *APRI* 3, no. 73 (JL, 8898), 80 (*IP* 6/1, 254/13; JL, 8960). See also, *Collectio Alani*, Bk. 2. XVIII. 4 (Appendix 87), 261 (Kanonistische Ergänzungen zur *Italia pontificia*, no. 84; S. Chodorow, *Dishonest Litigation*, n. 38), to the archbishop of Milan (anno 1146-53): 'Concerning that cause, whereby you have written to us, that a certain church has been included in our privilege through the request of the petitioner, since a controversy concerning it was set in motion...if you learn that the petitioner himself, although he has obtained the privilege, was not possessing the church itself, we do not wish that the authority of the privilege in this case should be able to be of advantage to him, but freely define the cause itself in accordance with the dictates of justice.' S. Chodorow, *Dishonest Litigation*, 193-94, added that Eugene 'did not mention the fraud that must have accompanied the request for the confirmation, but Alexander III, dealing with a similar case, did. In a case involving a fraudulently obtained letter of confirmation, Alexander explained to Bishop Roger of Worcester that papal confirmations were not to be challenged in court unless it was certain that they had been obtained by fraud.' This was an example of fraud through manipulation by setting up fact situations that would produce the desired result in the courts.

six of these involved the same case between the bishops of Huesca and Roda,[1] in which the purported forgery was eventually determined by Innocent III to be authentic.[2] Any allegation, therefore, that there would have been a prevalence of forgeries adduced in the course of papal proceedings at this point in the twelfth century, or that forgers aimed at taking advantage of papal susceptibility in this regard—that the papal system of justice encouraged this form of dishonest litigation or fraud—is not quite tenable on the basis of the existing papal evidence.

Admittedly, however, this is largely an argument from silence: the fact that the pope or chancery was rarely compelled to mention in writing the incidence of forgery scarcely proves that the curia was in fact ascertaining the existence of every potential forgery used and introduced in papal proceedings or in petitions for privileges and confirmations. For instance, in the case between the bishops of Huesca and Roda, as discussed below, the protocol of Huesca[3] pointed out the potential negligence or mishandling of the papacy's own registers on the part of Eugene III's curia. Furthermore, an imperfect knowledge of the history of papal diplomatics, let alone foreign or royal diplomas of any antiquity, could have proved problematic; this was so even under Innocent III, who, despite his own keen personal skill in detecting false writings, is known to have erred in verifying papal instruments of significant antiquity. Likewise, external or other non-literary criteria, especially the inspection and validation of seals and other outward features of papal documents—a criterion stressed by Innocent III in particular, and key for legates and judges delegate away from Rome—could have proved defective in the detection of forgeries: for instance, even a genuine *bulla* could be added to a fallacious document, or an unauthorised document officially sealed—advertently if the chancery official was corrupt, or inadvertently if managed somehow to be slipped into the budget of other documents authorised for sealing.[4] Perhaps by the mid-twelfth century the problem was not quite fully appreciated.

On the other hand, as U.-R. Blumenthal observed, even the strictest rules for authentication, as might have existed under Innocent III's intended reforms, could have the opposite effect to what was intended: formulae and seal would appear less familiar and thus more suspect in proportion to the antiquity of an unregistered privilege.[5] In the case between the bishops of Huesca and Roda, the pope's curia supposedly erred in this way in quashing a genuine privilege of Urban II on the basis both of its text and seal. But errors of this sort would only have served to overestimate the reality of the problem; while, conversely, there is positive if isolated evidence that

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[1] See, ch. 3.5.
[2] *PL*, Eugene III, no. 2; PUS2, no. 47, 48, 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934).
[3] PUS2, no. 46.
[4] See, *Decretales*, Gregory IX, Bk. 2. XXII. 1-16, Bk. 5. XX. 1-9; U.-R. Blumenthal, *Papal Registers*, 145-48; H. Bresslau, *Handbuch* 1, 656-63; P. Herde, *Beiträge*, 84-103; R.L. Poole, *Medieval Chancery*, 24, 50, 102, 115-16, 119-21, 145-62, 199-203; C. Duggan, *Decretal Collections*, 40-41.
[5] U.-R. Blumenthal, *Papal Registers*, 147.

the curia did in fact correctly isolate illicitly introduced documents and punish the perpetrators in the course of papal proceedings. In June 1150 a letter was issued to the abbot and monks of S. Pietro, Perugia settling their controversy with the rector of the *domus hospitalis* of Perugia over the same hospital. The rector, according to the pope, 'was claiming under the name of the Sepulchre of Jerusalem possession of the forenamed hospital, which, as it had been translated to you from the mandate of [Lucius II] on the basis of certain letters of [Calixtus II], he was most pressingly demanding to be restored to him, on the basis that the same lord Pope Lucius, having been influenced by a false instrument, stole it from the Sepulchre of Jerusalem and conferred it upon your monastery. However, you were firmly asserting that it is genuine and that it contains nothing false.'[1] In fact, five years earlier Eugene himself had confirmed the hospital among the list of possessions in a privilege of protection issued for S. Pietro—'just as it has been restored to you by our predecessor of happy memory, Pope Lucius.'[2] Now, however, the pope recounted, 'with the letters having been produced *in medium* and diligently inspected, we have determined them to be entirely false and that, on account of which the lord pope [Lucius II], having been influenced, ordered a translation of possession to occur, fraudulently added.' The pope, accordingly, judged with the counsel of his cardinals in favour of the rector, 'saving the question of propriety.'[3] In another case, in an incomplete letter to the bishop of Cambrai, Eugene wrote ca. 1146: 'Further, because such a great lie and wickedness ought not remain unquashed and unpunished, we further order you to deprive the canons or clerics, who have presented or caused to be presented false writings to you on our behalf, of ecclesiastical office and benefice until they should present themselves with the same writings to our sight going to respond and make satisfaction etc.'[4]

Otherwise, and despite Eugene's curia's apparent mishandling of the case between the bishops of Huesca and Roda, recourse of the curia and others—including visitors to the curia—to the curia's series of registers, as it is now accepted that some type of papal register existed and was maintained under at least most of the popes in the twelfth century, would have probably been regarded as an asset of the papal systems of justice, especially to anyone willing to afford the cost of registration. Indeed, as noted, there is sufficient twelfth-century evidence that Eugene III both kept his own *registrum* and that under him various *registri* of the papacy were transported with the curia outside of Rome and open to visitors for consultation.[5] Nevertheless, it is not exactly clear as to what a *registrum* signified and consisted of and what was its exact structure and purpose at any given time in the central Middle Ages—the term, in fact, could be used to refer to any authoritative book. Broadly, it appears that in the twelfth century registers were among various books kept by

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[1] *APRI* 2, no. 396 (JL, 9396).
[2] *PL*, Eugene III, no. 13.
[3] *APRI* 2, no. 396 (JL, 9396); also, *IP* 4, *71/26, 71/27.
[4] PUN, no. 59. Cf., PUE2, no. 71 (JL, 9591); see also, PUE2, no. 64 (JL, 9433).
[5] See, ch. 1.1 and 3.5.

the Roman Church in the papal archives, though in fact they were at least sometimes transported with the curia outside of Rome; and a separate register existed for each pontificate, no matter how brief, subdivided into books with each book encompassing one pontifical year, as under Gregory VII—the evidence also suggests that these were proper books of attached folios and no longer merely a loose set of unconnected quires. The entries were roughly in chronological order; while there is no evidence that several registers were kept side by side during a pontificate: references appear to have pertained always to a singular *registrum* of a pope, a term used consistently and without qualifiers.

Basically, however, our knowledge of the content and use of papal registers, including the actual practice of registration, is hazy. Indeed, the contemporary practice itself of registering documents does not seem to have been pursued with any degree of consistency, and proceeded perhaps differently from pontificate to pontificate. And while it is now largely accepted that the extant register of Gregory VII was his complete original register—that is, not a copy or a collection of excerpts—this and the more or less continuous series of registers preserved in the Vatican Archives from Innocent III's pontificate onwards were clearly far from comprehensive. Rather, various and largely random letters were registered, including rarely letters received or sentences given abroad by judges delegate, along with papal *sententiae*, narrative passages and annalistic notes, or reports or entries prepared from minutes and abbreviated drafts of documents. And while privileges could also be registered, they do not, in general, appear to have been registered nearly as often as letters. In fact, anyone obtaining any papal document could presumably pay the added charge to have it registered. Yet, even the chancery itself does not appear to have registered all documents produced on its own initiative or concerning its own immediate business.[1]

Nevertheless, despite the very incomplete and haphazard nature of these registers, according to Blumenthal, already in the first half of the twelfth century the 'registration of letters and privileges added significantly to their value in the case of litigation,' while the registration of papal sentences can be observed as far back as the pontificates of Gregory VII and Urban II, so that 'the pope relied on the contents of registers as a guide to decisions of their predecessors or even their own,' and consultation became in the course of the twelfth century, in part as a response to the frequent forgeries of papal documents, 'evidently an essential part of the judicial process: failure to do so was negligence, and if the registers contained the letters and privileges as claimed,

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[1] See, U.-R. Blumenthal, *Papal Registers*, 135-51, and 135 n. 2-3 for more recent bibliographical citations; also, C.R. Cheney, *Medieval Chancery*, esp. 14-29; H. Bresslau, *Handbuch* 1, esp. 101-24, 149-61, 332-33; R.L. Poole, *Medieval Chancery*, 29-36, 86, 123-42, 202-04; P. Herde, *Beiträge*, 68, 77, 83, 134, 159, 164-65, 170, 207, 243-44; *The Register of Pope Gregory VII*, ed. H.E.J. Cowdrey, xi-xvii; W.E. Lunt, *Revenues*, 125-27; J. Sayers, *Papal Government and England during the Pontificate of Honorius III (1216-1227)* (Cambridge Studies in Medieval Life and Thought 3/21: Cambridge, 1984), 65-93.

these would normally be accepted as authentic,' possessing 'the greater legal value.' And thus, a spot check of Alexander III's *sententiae* reveals 'an attitude of almost rigid adherence to texts found in the registers;' while ordinarily, pope, cardinals, legates, and judges delegate, she found, would be far less willing to pronounce on the authenticity of a submitted document if it was unregistered. Blumenthal then qualified this assessment by cautioning that 'the extent of this use and the importance of register entry are not generally known.'[1] In fact, the papal record of the period 1143-53 provides little to no evidence, and certainly no explicit evidence, to support her basic conclusions. To begin with, neither the term *registrum* itself nor any reference to the papal archives was mentioned in any of the extant papal documents of the period.[2] As such, while papal documents in the same period were clearly admitted with regularity in papal proceedings, largely as the primary evidence, they were done so without any apparent reference to the papal registers. This itself was not new: the account of the procedure in the case of the abbot of Oudenburg at the curia in 1141 under Innocent II demonstrated how 'original' papal documents were brought to Rome and adduced before the pope in litigation—the abbot's entire account made no reference to the papal registers.[3]

In the case between the bishops of Huesca and Roda, in early 1145, Eugene III decided in favour of the bishop of Huesca on the basis that the bishop of Roda's primary evidence was a forged privilege of Urban II—as determined by the cardinals and other visiting prelates in attendance—from which two further genuine privileges of Paschal II which supported his cause had proceeded. All of the privileges were quashed and torn up in the presence of the pope. Yet, the bishop of Roda persisted in his cause to the point of contumacy, being threatened in June 1146 and again in late April 1148 with suspension should he not abide by the papal judgement.[4] Thereafter the matter was not mentioned again in the extant papal documents for the remainder of Eugene's pontificate.[5] Eventually, however, although Alexander III would subsequently confirm Eugene's decision on the basis of a record of the *sententia* found in Eugene's register, Celestine III would re-open the case—though he considered such an action to be both novel and

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[1] U.-R. Blumenthal, *Papal Registers*, 143-49, here at, 144, 146, 149; also, P. Herde, *Beiträge*, 83-84 and 83 n. 23: R.L. Poole, *Medieval Chancery*, 146-47; C. Duggan, *Decretal Collections*, 40.

[2] Cf., e.g., the letter of Pope Honorius II (1124-30) explaining to Peter of Cluny how the claims of his rival Abbot Pontius and his supporters were proven false: *Qui statim productis apostolici viri regestorum papae Calisti voluminibus, et assertione testium, qui tunc praesentes fuerunt, convicti sunt. PL*, Honorius II, no. 48, col. 1265-68 (JL, 7268), here at, col. 1267. It is not clear, however, who took the initiative in consulting the registers, whether the parties or the pope; cf., U.-R. Blumenthal, *Papal Registers*, 139 and n. 21.

[3] See, *Der Bericht des Abtes Hariulf von Oudenburg*, 101-115, esp. 106-07.

[4] See, ch. 3.5.

[5] In a privilege of 1150 for the Templars, Eugene would confirm a number of concessions of tithes made to the order 'with the consent' of several Iberian bishops including the same Bishop William of Roda: PUTJ1, no. 13.

inconvenient—as he found *in archivis apostolic sedis* in the registers of his predecessors both the genuine privilege of Urban II and the letter of Paschal II. Celestine deemed these documents definite proof, and delegated the cause, instructing three judges delegate, to whom he transmitted transcripts of the pertinent registered documents, to review Eugene's decision as it would never have come about, he wrote, if Eugene had referred back to the registers themselves at the time of the sentence as diligently and solicitously as he himself had.[1] Ultimately, however, the case was re-appealed to Innocent III who himself reviewed the decision on the basis that both civil and canon law permitted it under the appropriate circumstances even in the case of *res bis iudicata*, and because from the information provided for the sentence in the register of Eugene III (*ex data sententiae in registro...Eugenii...repertae*) he understood that the sentence had been given only in the first month of Eugene's pontificate, so that he was not fully acquainted with the merits of the case, and because the sentence itself appeared to be based solely on a privilege of Urban II, the *tenor* of which he in fact was able to find 'though a careful search in that pope's register whole and completely incorrupt.'[2] Both Innocent III and Celestine III thus accepted the authenticity of the privilege not because they were presented the formally perfect original, but because some copy had been found *penitus incorruptum* in Urban's register, and Eugene's decision was ultimately reversed in favour of the church of Roda.[3]

Indeed, neither the protocol of Huesca which detailed the proceedings of the case in 1145 nor any of the extant papal letters issued on its behalf under Eugene III provided any indication that the registers had at any time been consulted during the proceedings of the trial in 1145. Rather, each stated plainly that all papal documents admitted and consulted had proceeded solely from the parties themselves.[4] However, certain questions about this case remain. To begin with, the same protocol of Huesca provided a curious epilogue which reported that, after Eugene had issued his original sentence from the papal town of Narni, and after an unsuccessful review of his case at Orte, also in the Patrimony, the bishop of Roda was caught trying to falsify the papal registers by replacing a certain document pertaining to his church in the registers with the one which had been condemned at Narni.[5] Accordingly, it is highly suspicious that the bishop of Roda

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[1] PUS1, no. 246.

[2] *...cuius tenorem nos in registro ipsius subtiliter intuendo integrum invenimus et penitus incorruptum. Decretales*, Gregory IX, Bk. 1. XLI. 5.

[3] For the history of debate on these documents as well as the case itself, see, M. Horn, *Studien*, 166-74, esp. 170-74; U.-R. Blumenthal, *Papal Registers*, 138-44.

[4] See, *PL*, Eugene III, no. 2; PUS2, no. 47, 48, 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934), 60 (JL, 9258).

[5] *Postea vero apud civitatem, que dicitur Orta, retractatum est iuditium in pleno concessu a domino papa et a predictis personis, quia Rotensis submurmurabat et apud seculares detraebat curie, dicendo se iniuste iudicatum. Dominus papa fecit afferri in publico scripta, que Rotensis post iuditium atulerat a registro, et collata sunt eis ea, que fuerant damnata in civitate Narnia, et murmur Rotensis et error posterior inventus est deterior priori, quia adeo dissonuerunt scripta collata, quod prorsus confirmatum est iuditium et episcopus Rotensis damnatus nisi misericordia subveniret.* PUS2, no. 46.

in 1145 was at no point in the proceedings able to appeal successfully to the registers when we are told pointedly that he took it upon himself afterwards to consult them and then attempt this act of fraud. In fact, as the albeit biased protocol noted plainly enough that the bishop of Roda had been apprehended removing other documents of his church which had in fact been registered, clearly the fact that privileges of his church had at some point been registered had come to the pope and cardinals' attention. The protocol also made an effort to emphasise that these documents and those which Roda had alleged in the course of the trial, and were subsequently condemned, differed considerably and that this discrepancy formed the basis for the pope's confirmation of his initial judgement. Furthermore, the protocol and papal letters regarding the case stated plainly that the condemned privileges had been torn up in the pope's presence at Narni, suggesting that Roda must have had multiple copies at hand with which he attempted to replace those registered documents. Eugene's curia was only at Orte for a few days in late March 1145 after immediately quitting Narni, so that his confirmation, 'in a full assembly' of all of the aforementioned prelates who had witnessed the initial judgement, occurred only shortly after the initial judgement.[1]

Furthermore, while Innocent III in fact would apologise for Eugene's erring in the case on account of the fact that his newness as pope—and in fact Eugene was entirely new to the curia—had prevented him from conducting himself in all particulars associated with the cause with due diligence, Eugene himself had not actually proclaimed the documents as forgeries. This had been the determination of his cardinals. Rather, the whole trial had been delegated; and it was reported that Urban II's *decretum* had 'been shown to archbishops, bishops, abbots, and most religious men, and determined and proved most false by all of them no less in the seal than in the letters.'[2] Thus, it seems suspicious that both Eugene's cardinals and the other visiting prelates in attendance should have wrongly determined the privilege and seal to be manifestly false, and yet no one considered to have recourse to the registers even though the bishop of Roda certainly believed that they contained a copy of some document pertaining to the rights of his church. Moreover, the papal legislation on the detection and punishment of forgeries from Alexander III to Innocent III as it is contained in the *Decretales* of Gregory IX, while emphasising in the authentication of a papal document the criterion of the validity of seals, as well as internal or literary criteria, made no reference to the papal registers.[3] This, apparently, was the procedure followed by Eugene's curia, having determined both text and seal corrupt. However, none of this information was provided in Eugene's letters concerning the cause, which merely noted that the privilege of Urban II, to which Celestine III or Innocent III would have had reference, was

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[1] Eugene's curia was definitely at Narni between 2 March and 17 March 1145, and at Orte on 25-26 March; see, JL, 8714-8725.
[2] PUS2, no. 46.
[3] See, *Decretales*, Gregory IX, Bk. 2. XXII. 2-10, Bk. 5. XX. 2-9.

determined to be 'false.' Ultimately, again, it is highly curious that both the curia's examination in 1145 had proved so faulty and that at the same time the bishop of Roda himself had not objected in some way on the basis of the registers. Similarly, it seems strange that Alexander III, in reviewing the case, was able to locate in the registers a copy of Eugene's sentence but not, as Celestine III and Innocent III would be able, a copy of Urban II's privilege.

In any event, the bishop of Roda in 1145 refused to concede defeat in the cause, and resisted Eugene's sentence for at least three years to the verge of suspension. Similarly, the bishop's own successors never abandoned the cause and eventually prevailed. Thus, ultimately, given the discrepancies apparent in the available records, either the party of Roda at some later date had actually succeeded in completing the original attempt in 1145 to falsify the registers and substituted a forged privilege of Urban II before both Celestine III and Innocent III were able to review the case, or the curia around 1145 was both incompetent in ascertaining the authenticity of a papal document on the basis of internal literary evidence and seal and negligent in effectively utilising or even referring to its own registers, even though Eugene had publicly produced the writings at Orte, after a review of the case, which Roda had pilfered from the registers and replaced with the condemned privilege of Urban II. But if that condemned privilege was in fact genuine, and had remained hidden in the registers nonetheless, the party of Roda had proved equally ineffective or negligent in locating there a copy on its own behalf, although he himself evidently found something germane to his church. In general, in fact, the papal record of the period 1143-53 does not provide any real evidence that the curia or any party was actually utilising the papal registers in judicial procedure. To be sure, throughout the letters older papal documents were referred to in procedure with regularity, but not always with a clear indication of their source. For instance, In an undated letter to the bishop and clerics of Exeter, Eugene III wrote that just how often that bishop's predecessors and he personally had been instructed by Paschal II, Calixtus II, and Innocent II to bless and concede to the monks of St. Martin de Bello in the city of Exeter their own cemetery and burial rights, 'we know from the rescripts of their letters and, because, just as the complaint of the monks themselves indicates, it has not yet been given up to effect, we are greatly amazed over such great disobedience.'[1] In this case it is unclear if the *rescripta* in question meant papal copies or letters presented at the curia by the monks themselves. In most instances the implication of the source of papal documents entered in procedure was vague, and it was merely mentioned that papal letters or privileges were inspected or read. Otherwise, when indication of their source was provided, or even insinuated, it was invariably inferred that they were produced or put forward by the parties themselves in a cause from their own records.

For instance, in a letter of November 1148 to the archbishop of Ravenna concerning his

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[1] PUE1, no. 54.

metropolitan controversy with the bishop-elect of Piacenza, the pope noted that he had judged in favour of the archbishop on the basis of the inspection of the privileges of 'the Roman pontiffs Gelasius, Calixtus, Honorius, and Innocent.'[1] While the letter gave no actual indication of the source of the papal privileges inspected, Eugene had in fact already ordered the same archbishop in March to 'present yourself to our sight on [18 October] with your records and accounts so that we might more fully inquire into and understand that controversy.'[2] In a letter of May 1144 to the archbishop of Tours concerning his metropolitan controversy with the bishop of Dôl, it was noted that the archbishop had successfully defended his claims on the basis of a privilege of Urban II which itself claimed was being granted on the basis of privileges of, 'namely, Nicholas, John, Leo IX, and Gregory VII.'[3] In fact, Urban II's own letter failed to specify to which Pope 'Nicholas' or 'John' it itself was referring, while in fact specifying 'Leo IX' and 'Gregory VII.' Thus, Lucius II himself was probably unsure as to which specific popes these referred and clearly did not have recourse to their documents;[4] the omission was repeated by Eugene III in his confirmation of Lucius' decision.[5]

In October 1145 Eugene delegated a cause to Cardinal-priest Aribert of S. Anastasia, the bishop of Bergamo, and the abbot of Astino as the canons of S. Vincenzo, Bergamo had complained to him that the canons of S. Alessandro, Bergamo were refusing to observe the terms which had been enacted by the apostolic see over the controversy and 'confirmed through the privileges of our predecessors.' The delegates were instructed to 'strive diligently to inquire into and understand as much from the privileges as from the other complaints and accounts of both parties, and signify to us as fully as possible with your letters, the truth of the matter.'[6] Apparently, the pope's inability or unwillingness to consult the privileges directly was a basis for delegation. In March 1146 Eugene rebuked the monks of Eysse because, 'just as we have learned through the attestation of [the cardinal-bishop Alberic of Ostia] and the relation of the brethren of the monastery of Moissac, the church of Eysse has from the gift and concession of Roman pontiffs been placed under the governance and ordination of the monastery of Cluny, and an abbot should not be elected in the same place without the providence and counsel of the abbot of Cluny.' At length, the letter ordered them to elect an abbot under the supervision of the abbot of Cluny from the convent of Moissac, 'in accordance with ancient custom and the terms of the privileges of the apostolic see.'[7] At no point did the letter infer that knowledge at the curia of the said privileges

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[1] *PL*, Eugene III, no. 324 (JL, 9301, for the date).
[2] *PL*, Eugene III, no. 264.
[3] *PL*, Lucius II, no. 40; this was repeated in *PL*, Eugene III, no. 152; see also, *PL*, Lucius II, no. 41, 43.
[4] See, *PL*, Urban II, no. 113, col. 385-87 (JL, 5519), no. 114, col. 387-88 (JL, 5520).
[5] See, *PL*, Eugene III, no. 152.
[6] *PL*, Eugene III, no. 43.
[7] *EPRI*, no. 193 (JL, 8877); see, on this case, PUF7, Nach. Gott., no. 28, 29, 30.

had come from any other source than the cardinal-bishop of Ostia and the monks of Moissac. In this case, oral testimony presumably substituted for or verified written documents which apparently were not available.[1]

The curia's limitations in these contexts seem to have continued even with regard to documents of the most recent pontificate. In early 1144, for example, Celestine II wrote to the prior and canons of the church of the Holy Sepulchre, Jerusalem: 'We have received with due kindness your brothers...with the letters of [Innocent II] sent by your fraternity, and have heard their just postulations...'[2] Six weeks later he wrote to the canons of S. Alessandro, Bergamo concerning their discord with the canons of S. Vincenzo, ordering them 'to allow two wiser and more discreet men from your number...to come to our presence and convey with them the ancient and new privileges of your church, principally those of [Innocent II], so that then, having inspected the privileges and having heard the accounts of both parties, we might enact between you that which must be enacted with the Lord the Author.'[3] In similar cases it was made clear that Eugene III did not always have direct access to the letters of both Celestine II and Lucius II. Thus, in early 1146, in a letter to the prior and brethren of St. Martin-des-Champs addressing their longstanding controversy with the canons of St. Gervais, Encre, Eugene simply ordered that 'if anything which has been enacted over the same cause by [the former] bishop of Amiens has also been affirmed with the writings and authority of our predecessors...Innocent [II]and Lucius [II]...we further confirm it with apostolic authority and have decreed that it remain ratified and have imposed perpetual silence upon the canons [of St. Gervais] over the same cause.'[4] In sum, what seems clear from the evidence of the period around the mid-twelfth century is that the papal registers at this time were either very sparsely filled—especially with regard to privileges, which nonetheless seem to have constituted the primary category of documents adduced in procedure—or that they were seldom if ever consulted either by parties at the curia or by papal officials themselves.[5] And in any case, any recourse to the registers, however incomplete, would have been impossible for papal legates and judges delegate away from 'Rome.' The presumptive conclusion, therefore, is that in the context of the current state of and perhaps strain being imposed upon the papal systems of

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[1] See similarly, e.g., Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256).
[2] *PL*, Celestine II, no. 29 (*RRH*, no. 222; JL, 8482).
[3] *PL*, Celestine II, no. 41.
[4] *PL*, Eugene III, no. 82; see similarly, e.g., Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 364, no. 932 (JL, 8780); PUS2, no. 68. In a particular instance, from mid-May 1144, it was suggested that the curia did not have recourse to its own copies of privileges in renewing a privilege of protection for the bishop of Bologna. *PL*, Lucius II, no. 34.
[5] In fact, it has been pointed out that even by Innocent III's time the chancery did not usually register mandates to judges, and had no index to the documents it had registered. It has also been generally thought that privileges were registered far less often than letters. See, U.-R. Blumenthal, *Papal Registers*, 140-50; *Letters of Innocent III concerning England and Wales*, ix-xi; C.R. Cheney, *Becket*, 65; C. Duggan, *Decretal Collections*, 40; S. Chodorow, *Dishonest Litigation*, 188, 193; I.S. Robinson, *Papacy*, 197-98.

justice, the onus of producing specific pieces of evidence fell squarely and solely on the shoulders of the parties themselves

Broadly, therefore, while written documents were used invariably in procedure in the period 1143-53, they proceeded by and large from the parties themselves, and not from the curia's own archives. At the same time, however, the papal record of the same period provides no information that the parties themselves were any less negligent or ineffective than the curia in so doing.[1] These things notwithstanding, the existence of any kind of register at the curia in this early period, and more importantly, the option of paying to register one's documents there, was an advantage in and of itself of any legal system or title-producing office, despite its limitations and potential misuse in procedure. And ultimately, especially given the availability of expertise and so many university men in the chancery and at the curia broadly—again, despite their supposed failings as demonstrated in the case of Huesca versus Roda—it must be thought that if the use of forgeries were at all a problem for the papal court, it must have been so much worse for others. What is more important here, however, is that it is manifestly clear from the papal record that the use if not the requirement of written documentation in all manner of business but especially in litigation had become a matter of procedural routine at the curia. And most importantly, the curia itself around mid-century had indeed become a prolific producer of new documentation which in very many cases either renewed and confirmed older records or, in the manner of the detail which could often now be expected in new papal documents, provided for their deficiencies. In this way, new decisions as well as customary rights were being established legally in writing with relatively thorough precision.

7.4 LETTERS AND PRIVILEGES

In spite of the danger and disorder caused by war between the Roman curia, nobility, and populace, not to mention the occasionally hostile 'policies' of the German and Sicilian kings, the city of Rome itself throughout the twelfth century remained as one of Latin Christendom's pre-eminent pilgrimage destinations, so great was the corresponding popularity of and belief in the merit derived from the act of pilgrimage at this time.[2] Indeed, at length, one of the curia's most effective weapons against the Roman commune proved not to be its own spiritual or material sword but its very own absence and the consequent economic attrition which affected the City, so dependent was it on pilgrim traffic and traffic associated with the papal petitionary system—in

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[1] According to U.-R. Blumenthal, by the early thirteenth century parties at the curia were in fact using the papal registers in litigation with some considerable skill and sophistication; see, U.-R. Blumenthal, *Papal Registers*, esp. 138-42

[2] See, e.g., D.J. Birch, *Pilgrimage to Rome*, esp. 150-86; G. Constable, *Opposition to Pilgrimage*, 125-46; D. Webb, *Pilgrims and Pilgrimage*, esp. 51-152.

fact, when looked at strategically, Eugene's fortress-policy in the Patrimony was largely concentrated on the north-south axis of roads leading into and out of the City.[1] In this way, for clerics who had legal business to bring to Rome, the burden of travel may not have seemed so great when offset by the opportunity to combine various motives of visitation—as in the case of potential pilgrims, or prelates who were increasingly obligated to come to Rome to confirm their office or dignity, or receive consecration.

This type of two birds with one stone argument is supported by the papal record which suggests that litigants or supplicants at Rome did not commonly undertake the journey solely for the express business of any particular cause or privilege. H.E. Salter supposed that groups of cases were set aside in the provinces for sending to Rome; and that a wide mandate could then be sought to be used against a number of people on a variety of charges, at least in minor cases.[2] And according to J. Sayers, the evidence from the early thirteenth century confirms this supposition. On the basis of that evidence, Sayers explained, delegated suits could be brought against many people off of one 'mandate,' naming multiple defendants in various and disparate causes, or summoning an unlimited number through the clause *et quidam alii*—though not to include persons of greater importance than those named explicitly—and thereby making it difficult for interested parties at Rome or their proctors to know when to raise contradictions. These 'inclusive mandates' go far to explain the presence of so much 'small fry' brought before the delegated courts, she concluded, as well as why monks 'chose to invade the delegated courts with their suits.'[3] Similarly, she maintained, by the thirteenth century, the charge of mandates of delegation could be elastic enough to enable a plaintiff to summon such nondescript groups on a collection of vague charges: for instance, *super possessionibus, decimis, debitis et rebus aliis*, or *super possessionibus, legatis et rebus aliis*, or *super subjectione, obedientia, professione, vistatione, procuratione et rerum eiusdem ecclesie dispositione*.[4]

In fact, some semblance of these features was presaged in the letters of justice of the period 1143-53. In July 1147, for instance, Eugene III wrote to the bishops of Angers, Le Mans, and Nantes that the nuns of Notre Dame, Roncerary were 'complaining to the apostolic see against certain of your parishioners about various and grave injuries.' According to the nuns' claim, two

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[1] Cf., e.g., *PL*, Eugene III, no. 583 (*IP* 3, 251/1; JL, 9726/9727); JL, 9509; *IP* 1, 198/5, *192/3; *IP* 2, 79/4 158/13, 171/1; *IP* 3, 4/14; Theiner 1, 14, no. 16 (*LC*, 402-03, no. 123; *Antiquitates* 4, 37-38; *IP* 2, 204/2), Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465); *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14), *LC*, 382-83, no. 92 (Theiner 1, 14-15, no. 18; *Antiquitates* 3, 777-78; *IP* 1, 187/5), *LC*, 383, no. 93 (*Antiquitates* 3, 779; *IP* 1, 192/2), *LC*, 383-84, no. 94 (Theiner 1, 14, no. 17; *IP* 2, 207/3), *LC*, 384, no. 95 (*Antiquitates* 2, 559-60; *IP* 2, 207/1), *LC*, 384-85, no. 96 (*Antiquitates* 2, 559-60; *IP* 2, 207/2), *LC*, 428, no. 172 (*IP* 1, 191/1; JL, 8710), *LC*, 403-04, no. 124 (*Antiquitates* 4, 241-42; *IP* 3, 482/1); *APRI* 3, no. 112 (Mansi 21, 626; *IP* 2, 119/7), 114 (JL, 9732).

[2] *Cartularly of Oseney Abbey* 6, ed. H.E. Salter (Oxford Historical Society 101: Oxford, 1929-), 339.

[3] J. Sayers, *Judges Delegate*, 66-68, 215, 220, here at, 220.

[4] J. Sayers, *Judges Delegate*, 69, citing unprinted sources.

different houses of monks, a certain priest, and a certain layman were 'stealing from them without a judgement and through violence,' respectively, a certain tithe, a parish, another tithe, and a wood; furthermore, a certain knight had 'burned the homes of the same [nuns] on a Sunday with sacrilegious presumption.' Accordingly, the pope ordered the bishops to compel their various parishioners and others—'concerning whom they would have made their complaint'—to make restitution or else fittingly punish them. Still, further, the mandate informed the bishops that the nuns also complained that in another parish pertaining to their rights another layman was presuming to found a new *basilica* to their detriment: 'therefore, your prudence should inquire into this, and that which will need to be enacted in accordance with the canons let you enact with the Lord as the Author.'[1] In general, points of contention between parties were commonly summarised in the letters of this period through vague terminology such as 'possessions,' 'dues,' 'rights,' or simply 'complaints,' or the like, often times in combination or with other vague catchalls—*aliae res*.[2] In September 1145 the pope wrote to the archbishop of Rouen that the bishop of Bayeux had complained that the abbots of Fecamp and Troarn, 'concerning the priests to be placed and removed in the parish churches which they hold in his diocese, and also concerning many other things pertaining to the episcopal rights, which we refrain to list on account of prolixity, are inflicting grave injuries upon him and depriving him of his justice...'[3] At the beginning of 1144 Celestine II wrote to the archbishop of Salzburg and the bishops of Regensburg and Passau concerning the complaints of the abbot of Rott, simply ordering: 'concerning your parishioners, concerning whom they would have complained to us, having put aside all forms of subterfuge, fully administer justice for them.'[4] The same day, Celestine wrote to the bishop of Augsburg that the abbot of the monastery of Rott had come to the curia and complained that the widow of a certain count as well as one of the bishop's own *ministerialis* were 'violently seizing and unjustly detaining certain possessions pertaining to the rights of the monastery committed to him.'[5]

Papal justice accordingly was also dealing with no shortage of 'small fry;' and the amount of petty stakes comprised a somewhat remarkable proportion of the causes and *negotia* being disposed in the papal letters and privileges of this period. By and large, however, a type of loose

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[1] PUF5, no. 74. Cf., *PL*, Eugene III, no. 229, to the French regent Abbot Suger of St. Denis in October 1147 briefly concerning, in turn, the condition of the church of Paris; recalcitrant French bishops who were refusing to heed the abbot-regent's orders regarding the policing of the kingdom; the abbot's offer of a location for the pope's planned council, ultimately held at Reims; the abbot's excommunication of the duke of Lotharingia; and lastly, the abbot's own unelaborated request concerning a certain church.

[2] For the incidence of 'certain others (*quidam alii*)' in the letters of 1143-53, see, e.g., *PL*, Celestine II, no. 20; *PL*, Lucius II, no. 13; *PL*, Eugene III, no. 124, 208, 209, 280; *EPRI*, no. 188 (JL, 8554); *APRI* 2, no. 389 (JL, 8814).

[3] PUF2, no. 37.

[4] *PL*, Celestine II, no. 23.

[5] *PL*, Celestine II, no. 24; see similarly, e.g., *PL*, Eugene III, no. 92.

mandate without any mention of specific persons or objects, especially the loose and expansive 'inclusive mandate' described by J. Sayers, was not typical for this period. For petitioners at Rome, rather, what was particularly common in this period was the simultaneous procurement of multiple documents, treating independently or simultaneously various business: the traceable incidence of which practice is doubtless greatly minimised given the fractional survival of all chancery documents. In this way, as a particularly conspicuous example, at least eleven separate papal letters all dated the same day in 1152 were issued on behalf of Abbot Wibald of Corvey.[1] In fact, it appears that it would not have been uncommon for any churchman visiting the curia to use the opportunity of this visit to conduct whatever business he or his house had stored up, including especially various legal scores. Thus, even Gerhoh of Reichersberg, an outspoken critic of the worldly entanglements of the clergy, obtained an order to the bishop of Passau in March 1144 ordering the bishop to warn his parishioners and relatives under penalty of excommunication to restore peace to the provost, 'returning from Rome;' and moreover to check his priests, 'who have dared to excommunicate the merchants (*mercenarii*) and *coloni* on account of the tithes which Innocent [II] had affirmed in writing for him;' and lastly, to compel a certain named individual, who had seized a farm of his church, to restore 'those things which have been seized.'[2] The same day the provost also obtained a letter of recommendation to the archbishop of Salzburg and the bishop of Gurk, ordering them to assist in all things the same provost who had come in person to the curia.[3]

Furthermore, because appellants were exposed to the risks of violence, intrusion, and intimidation at home, litigants appealing from England had, apparently as early as 1146, recourse to archiepiscopal *tuitio*, or a tuitorial appeal: an application to the archbishop to maintain the plaintiff's *status quo*, pending litigation, and to protect his person and property—by 1200 the practice was well established.[4] In the mid-twelfth century, rather, this type of practice seems to have been anticipated on a regular basis by a large number of appellants—clergy of all kinds—simultaneously obtaining papal privileges of protection along with their letters of justice, or, in fact, letters concerning all manner of business.[5] Thus, on the same day in February 1153 a

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[1] See, *PL*, Eugene III, no. 467-77; Wibald, no. 354 (JL, 9521).
[2] JL, 8576 (P. Classen, *Gerhoh von Reichersberg*, 342, no. 32).
[3] *PL*, Lucius II, no. 85 (P. Classen, *Gerhoh von Reichersberg*, 342, no. 33; JL, 8577); see, P. Classen, *Gerhoh von Reichersberg*, 107-08.
[4] See, *The Letters and Charters of Gilbert Foliot, Abbot of Gloucester (1139-48), Bishop of Hereford (1148-63), and London (1163-87)*, ed. A. Morey and C.N.L. Brooke (London, 1967), 92-93, no. 56; J. Sayers, *Judges Delegate*, 96-97; C.R. Cheney, *Innocent III and England*, 118-19.
[5] See, e.g., *PL*, Celestine II, no. 13: *PL*, Celestine II, no. 14; *PL*, Lucius II, no. 9: *PL*, Lucius II, no. 10: JL, 8537: JL, 8539; *PL*, Lucius II, no. 27: *PL*, Lucius II, no. 28: *PL*, Lucius II, no. 29: JL, 8592; *PL*, Lucius II, no. 73: *PL*, Lucius II, no. 75; *PL*, Eugene III, no. 21: *PL*, Eugene III, no. 23; *PL*, Eugene III, no. 24: *PL*, Eugene III, no. 25; *PL*, Eugene III, no. 58: JL, 8812; *PL*, Eugene III, no. 109 (P. Classen, *Gerhoh von Reichersberg*, 345, no. 40; JL, 8914): *PL*, Eugene III, no. 111 (P. Classen, *Gerhoh von Reichersberg*, 346, no. 41; JL, 8922); JL, 9201 (*PL*, Eugene III, no. 263): JL, 9292; *PL*, Eugene III, no. 265: *PL*, Eugene III, no.

privilege of protection was issued for the archbishop of Arras as well as eight other separate letters issued on his behalf—to the canons of the church of Arras, the populace and clergy of Arras, the nuns of Denain, the 'greater and lesser men of Douai,' the count of Flanders, the countess of Flanders, the archbishop of Reims, and the abbot of St. Vedast—concerning, principally, violations of the bishop's temporalities, but including also a rumour of heresy in his diocese.[1] On the same day in late May 1144 Lucius II confirmed a privilege of protection for the church of Ely and sent separate letters to the archbishop of Canterbury 'and the bishops constituted throughout England,' the archbishop of Rouen and the bishop of Normandy, King Stephen, and the abbot of Thorney and the chapter of Ely, concerning various *negotia*, but especially the despoiled and alienated episcopal goods of Ely.[2] Certainly, the ardour and travail of the journey to Rome from England were inhibitive for many English churchmen, and thus, as evidenced in this sequence of correspondence, it was surely a measure of economy to carry and transact multiple and disparate items of business at one time. And as three privileges had been issued twenty days prior to the canons of the church of Lichfield and the bishop of Coventry,[3] it was even possible that the two bishops had set out together in convoy.

The process worked similarly for the religious. In November 1150 a privilege of protection was issued for the monastery of St. Quirinus, Tegernsee in Bavaria.[4] On the same day, a letter was sent to the archbishop of Salzburg informing him that the pope had received a complaint on behalf of Bishop Otto of Freising that the son of Otto IV Wittelsbach, count palatine in Bavaria, had personally assaulted him while he was conducting mass: 'that he ought to be punished with a punishment as grave and coercive,' the pope added, 'the discretion of those who know rightly is not ignorant.' Accordingly, the letter ordered the archbishop to compel the perpetrator to make restitution or else to excommunicate him. The archbishop was further ordered 'to maintain and defend' the abbot and brethren of the monastery of Tegernsee, 'and concerning their complaints which they will have indicated to you administer due justice for them.'[5] On the same day, the pope wrote to the bishop of Freising directly, commending to him the monastery of Tegernsee, and specifying that, 'concerning their complaint over tithes and a certain estate which

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266; *PL*, Eugene III, no. 314: *APRI* 3, no. 90 (JL, 9285); *PL*, Eugene III, no. 433 (JL, 9457; see, *HP*, 70), 434, 435 (JL, 9459; see, *HP*, 70): *PL*, Eugene III, no. 432; *PL*, Eugene III, no. 464: *PL*, Eugene III, no. 465; JL, 8548: JL, 8549; JL, 8553: JL, 8556; *APRI* 3, no. 74 (JL, 8906): *IP* 6/2, 19/9; *APRI* 3, no. 74 (JL, 8906): PU in Piemont, no. 4 (*IP* 6/2, 14/28); *EPRI*, no. 198 (JL, 8954): JL, 8953; PUE3, no. 50: PUE3, no. 51 (JL, 8855); PUE2, no. 39 (JL, 8628): PUE2, no. 35 (JL, 8629); PUF2, no. 58: PUF2, no. 59 (JL, 9228).

[1] *PL*, Eugene III, no. 558-66.

[2] PUE2, no. 35 (JL, 8629), 36 (JL, 8625), 38 (JL, 8627), 39 (JL, 8628); JL, 8626; see also, PUE2, no. 40 (JL, 8686).

[3] *PL*, Lucius II, no. 27, 28 (JL, 8593), 29 (JL, 8594).

[4] *PL*, Eugene III, no. 402.

[5] *PL*, Eugene III, no. 403. See, Otto of Freising, *Gesta*, 110: the count was eventually outlawed at a diet at Regensburg for the sins committed by his sons.

they have against Otto, count palatine, when they will have complained in your presence, administer due justice for them and maintain and defend the place itself in its liberty.'[1] Again to the archbishop of Salzburg, and again on the same day, the pope wrote in yet another letter that he had recently received a second complaint from the party of the abbot of Tegernsee against Otto, count palatine, 'who has seized for himself through violence certain tithes which pertain to the rights of the church committed to him, just as he claims, and refuses to restore them.' The archbishop was therefore ordered 'to compel coercively the same count either to restore the tithes themselves to the aforementioned church or perform due justice for the same church over this in your presence'—otherwise, the archbishop should excommunicate the same count.[2] At the same time, the pope commended the church of Freising to Conrad III of Germany, admonishing him 'to administer justice for Bishop Otto of Freising over injuries inflicted by Otto, son of Otto the count palatine, during mass.'[3] It was a measure surely of expediency on the part of the curia and interested parties—indeed, to the point of presenting a conflict of interests—as both Bishop Otto and the monastery had cases against the same nobleman, to merge their causes in this way.

In another instance, in August 1147 a privilege of protection was renewed for the English monastery of St. Albans.[4] On the same day, the pope delegated to the archbishop of Canterbury and the bishop of Lincoln the complaint of the abbot and monks of the monastery that the men of Hertfordshire were 'unjustly detaining certain revenues and customs due to their monastery'—specifically, the cartage taxes which the monks held at certain fairs—'and they refuse against justice and ancient custom to return the same to them.' Accordingly, the pope ordered the archbishop and bishop to compel their parishioners to make restitution and desist from further injury within two months or else suitably punish them.[5] At the same time, a separate letter was issued to the abbot and brethren of St. Albans, 'prohibiting that any minister, namely a *dapifer* or *pincerna*, *camerarius*, *dispensator*, *ianitor* or *praepositus*, through the hands of the king or any prince, should further effect violence, with you refusing and unwilling, in your monastery or in the places pertaining to it itself.' A further clause was added forbidding anyone to conduct any transaction whatsoever concerning a certain land without the abbot's consent; and another clause confirming their customs in a certain market belonging to the monastery.[6] And in yet another letter, the pope delegated to the archbishop of Canterbury and the bishops of Lincoln and Ely other various complaints of the abbot and monks of St. Albans: first, that a certain layman was 'violently seizing and unjustly detaining' a certain land of theirs, and another layman and his sister

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[1] *PL*, Eugene III, no. 459 (JL, 9413, for the date).
[2] *PL*, Eugene III, no. 460 (JL, 9414, for the date).
[3] JL, 9412a (JL: *Fragm. hoc Alexandro III. perperam tribuitur*).
[4] PUE3, no. 68 (JL, 9143a).
[5] PUE3, no. 69.
[6] PUE3, no. 70.

a certain manor; second, that another layman, 'who is accused of perjury against them,' was seizing yet another land of theirs 'against justice, and has refused to pay the annual *census* which he ought to pay to them therefrom;' third, that yet another layman was 'invading and devastating their land;' and lastly, that three more different laymen 'presume to prey upon and plunder them, just as they claim.' Again, the archbishop and bishops were instructed 'to order the aforesaid invaders both to restore those things seized and desist from assailing the same. And if they should appear contemnors, administer canonical justice concerning them.'[1] In all such instances the simultaneous issuing of letters and privileges of protection certainly went hand and hand; and this phenomenon probably goes quite far to explain why and how a goodly portion of privileges of protection of this period were issued or renewed.

Furthermore, while there does not appear to be any considerable direct evidence for it in the documents of this early period, some houses may have employed standing representatives at the curia: in the Toledo primacy controversy, for instance, the archbishops of Braga and Tarragona were ordered on several occasions to come to the curia and respond to the representatives at the curia of the archbishop of Toledo either in person or through their own *sufficientes responsales*.[2] If so, for these and their clients anyway, the opportunity of petitioning or prosecuting at 'Rome' may not have been as inconvenient as is generally assumed. Nevertheless, many higher ecclesiastics and houses were in fact regular recipients of papal letters throughout the period 1143-53, suggesting that for certain Church dignitaries or their representatives the lines of communication were relatively fluid. For instance, an ecclesiastic as far afield as Archbishop Theobald of Canterbury was the recipient of no less than thirty-one extant papal letters in this period: none for 1143; three for 1144;[3] five for 1145;[4] three to four for 1146;[5] four to six for 1147;[6] one for 1148;[7] one for 1149;[8] three to four for 1150;[9] one to two for 1151;[10] four to five for

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[1] PUE3, no. 71.
[2] In several instances a defendant was ordered through papal letters to appear or plead either in person or by proxy, through *sufficientes responsales*; see, *PL*, Eugene III, no. 101, 322, 324, 425; PUF5, no. 69 (JL, 8823); PUF2, no. 41; PUF1, no. 44; five letters involved the primacy controversy between the archbishops of Toledo and Tarragona: *PL*, Eugene III, no. 447, 450, 588, 569; PUS2, no. 67. J. Sayers, *Judges Delegate*, 215, stated that there is evidence that by the thirteenth century most larger religious communities were employing standing proctors at Rome; on proctors and advocates at court, see, J. Sayers, *Judges Delegate*, 221-38.
[3] PUE2, no. 34, 36 (JL, 8625), 40 (JL, 8686).
[4] PUE3, no. 47, 48; PUE2, no. 42, 43; PUN, no. 56.
[5] PUE3, no. 49, 57, 74; PUF2, no. 41; *Historia monasterii S. Augustini Cantuariensis*, 404, no. 32 (JL, 8904).
[6] *PL*, Eugene III, no. 201; PUE3, no. 69, 71, 74; PUE2, no. 56; *Chronicon monasterii de Abingdon* 2, 200 (JL, 9100); *Historia monasterii S. Augustini Cantuariensis*, 403-04, no. 31 (JL, 8990).
[7] PUE1, no. 45.
[8] *PL*, Eugene III, no. 352 (JL, 9342, for the date).
[9] JL, 9432 (*laudatum* in PUE2, no. 64 [JL, 9433]); PUE3, no. 90; PUE2, no. 64 (JL, 9433), 65 (JL, 9428).
[10] JL, 9467; PUE3, no. 90.

1152;[1] none for 1153; and one undated letter.[2] Similarly, the terms of an oath which from the late eleventh century onward were exacted from archbishops upon reception of the *pallium* required the promise to make regular visits to the curia—*visitationes ad limina apostolorum*. By no later than the end of the twelfth century, it has been thought, all bishops who received consecration and abbots benediction from the pope would be compelled to assume a similar duty—the frequency of visitation varied in proportion to one's distance to Rome and dispensations from the duty began to be issued in the thirteenth century.[3] In fact, the papal letters themselves of the period 1143-53 demonstrated that some obligation of important prelates of 'visiting the threshold of the apostles' had already been established.[4]

Looked at another way, numerous privileges of protection were renewed more than once during the pontificates of Celestine II, Lucius II, and Eugene III. Not considering the Italian churches, Cluny was the exceptional example in this regard: its reissue under Lucius II listed, in reverse order, as those 'predecessors' whose example the current pope was 'following,' 'Honorius, Calixtus, Gelasius, Paschal, Urban, Victor, Stephen, Alexander, Gregory VII, Gregory VI, Leo IX, Leo VII, Benedict VII, Benedict VI, Agapitus II, John XIX, and John XI.'[5] Likewise, Cluny, exactly a year after Eugene's ascension, procured another renewal from the new pope, with the same list of 'predecessors' occurring, but now with Lucius' name affixed.[6] At least a further twelve papal letters were addressed to Cluny and its abbot in the period 1143-53;[7] while at least an additional twenty letters concerned or implicated the abbey or its abbot.[8] Likewise, two privileges

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[1] *PL*, Eugene III, no. 458, 518; PUE3, no. 90; PUE2, no. 69 (JL, 9546), 73 (JL, 9503).

[2] PUE3, no. 86

[3] See, J. Pater, *Die bischöfliche* visitatio liminum SS. Apostolorum*: Eine historisch-kanonistische Studie* (Görres-Gesellschaft zur Pflege der Wissenschaft im katholischen Deutschland: Veröffentlichungen der Sektion für Rechts- und Sozialwissenschaft 19: Paderborn, 1914), 1-61; J.B. Sägmüller, 'Die *visitatio liminum SS. Apostolorum* bis Bonifaz VIII.,' *Theologische Quartalschrift* 82 (1900), 69-117, esp. 46-47, 92-107; W.E. Lunt, *Revenues*, 91-92.

[4] See, *PL*, Lucius II, no. 26, 33, 34; *PL*, Eugene III, no. 132, 133, 461, 563, 577; PUE2, no. 40 (JL, 8686); PUF2, no. 31; *EPRI*, no. 190 (JL, 8612), 209 (JL, 9670); Archives historiques du Poitou 3, 9, no. 7 (apparently not in JL); cf., Bernard of Clairvaux, *Letters*, no. 131 (B.S. James, no. 140); *PL*, Innocent II, no. 2, col. 53-54, no. 4, col. 55-56, no. 5, col. 56-57. Already by 1135 Bernard of Clairvaux believed that the pope was 'able to summon any ecclesiastical persons however lofty from the ends of the earth and compel them to his own presence not merely once but as often as it should seem expedient.' Bernard of Clairvaux, *Letters*, no. 131 (B.S. James, no. 140).

[5] *PL*, Lucius II, no. 49.

[6] *PL*, Eugene III, no. 80.

[7] *PL*, Celestine II, no. 2, 42; *PL*, Lucius II, no. 48, 64, 89, 91, 92; *PL*, Eugene III, no. 185, 222, 239, 499, 531.

[8] *PL*, Lucius II, no. 40, 50, 86; *PL*, Eugene III, no. 72, 127, 186, 187, 203, 221, 256 (*IP* 7/1, 339/42; JL, 9189), 299, 303, 350, 497, 500, 532; JL, 8858; *EPRI*, no. 193 (JL, 8877), 207 (JL, 9632); PUF3, no. 32. For other French houses in this period, see, for the church of St. Martin, Laon: (privileges of protection) *PL*, Lucius II, no. 45; *PL*, Eugene III, no. 173; (a nondescript privilege) JL, 9244. See, for the monastery of Tournus, which enjoyed a special relationship with the papacy and extensive spiritual exemptions, and was a regular applicant for renewals from the late elventh century: (privileges of protection) *PL*, Lucius II, no. 54b; *PL*, Eugene III, no. 71; (other letters issued on the house's behalf) *PL*, Eugene III, no. 487, 584; Archives historiques du Poitou 2, 33-34, no. 21 (JL, 8842). See, for the extremely wealthy monastery of St. Martin-des-Champs: (privileges of protection) *PL*, Lucius II, no. 74; *PL*, Eugene III, no. 193b; (other letters, mainly

of protection were issued for the bishop of Arras under Eugene III.[1] In addition, at least one papal letter was issued to the bishop under Celestine II;[2] five under Lucius II;[3] and six under Eugene;[4] while a further fifteen letters under Eugene concerned or implicated the same bishop.[5]

Elsewhere, the church of St. Zeno, Reichenhall in the diocese of Salzburg received a privilege of protection under Lucius II, renewed twice under Eugene III.[6] For England, the monastery of St. Albans had its privilege of protection renewed under Celestine II and twice under Eugene III[7]—as well, at least four papal letters were issued on its behalf in this period.[8] A privilege of protection was renewed for the Spanish bishop of Pamplona under Celestine II, Lucius II, and Eugene III;[9] while at least four papal letters were issued in the same period concerning the same bishop:[10] at least two concerning clerical controversies;[11] and another from 1150 announcing to the all of the prelates and nobles of 'the province of Tarragona and farther Spain' that the pope had commissioned the bishop of Pamplona to collect the annual *census* due to St. Peter, and

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concerning the house's controversies with other religious) *PL*, Eugene III, no. 82, 297, 298; *EPRI*, no. 205 (JL, 9530); PUF8, no. 22 (JL, 8624), 24 (JL, 8671). See, for the canons regular of St. Victor, Paris: (privileges of protection) PUF8, no. 20 (JL, 8488), 25 (JL, 9034/9634); see also, PUF8, no. 11; (other letters, again mainly concerning the house's controversies with other religious) *PL*, Eugene III, no. 334; PUF8, no. 19 (JL, 8487), 22 (JL, 8624), 23, 24 (JL, 8671), 31, 42. See, for 'the church' of the austere White monks of Prémontré: (privileges of protection) *PL*, Celestine II, no. 13; *PL*, Lucius II, no. 44; *PL*, Eugene III, no. 179; (another privilege) JL, 8534; (other letters, all encyclicals, issued on behalf of the order) *PL*, Celestine II, no. 14; *PL*, Eugene III, no. 3, 55. See, for the double-monastery of Fontevrault: (privileges of protection) *PL*, Lucius II, no. 31; *PL*, Eugene III, no. 23, 381; (other letters) *PL*, Lucius II, no. 79; *PL*, Eugene III, no. 21, 358, 364; JL, 8545 (see also, JL, 8544); PUF5, no. 62, 71. See, for the monastery of St. Bertin: (privileges of protection) *PL*, Celestine II, no. 30; *PL*, Lucius II, no. 51; *PL*, Eugene III, no. 14, 15-16; JL, 8740; *Chronica S. Bertini,* 801; (other letters) *PL*, Eugene III, no. 14, 15-16; JL, 8740, 9421a, 9510, 9511; PUF3, no. 30; *Chronica S. Bertini,* 801. Lastly, the important and heavily exempted abbey of St. Denis, Paris, also renewed its privilege of protection regularly, though with very lengthy, if faily even, gaps (*PL*, Eugene III, no. 290); its abbot, Suger, was personally the recipient of at least twenty-one papal letters under Eugene III (*PL*, Eugene III, no. 92, 229, 297, 305, 329, 332, 333, 334, 356, 357, 366, 372, 374, 382, 383, 387, 390, 416, 417, 418; PUF8, no. 32 (*PL*, Eugene III, no. 320; JL, 9297); three further letters implicated or concerned him (*PL*, Eugene III, no. 373, 481; PUF9, no. 42); while another letter concerned Suger's successor at St. Denis (PUF9, no. 45 (*PL*, Eugene III, no. 555; JL, 9678).

[1] *PL*, Eugene III, no. 558; PUF3, no. 26 (JL, 8726).

[2] *PL*, Celestine II, no. 3.

[3] *PL*, Lucius II, no. 52, 56, 57, 77; JL, 8696.

[4] *PL*, Eugene III, no. 6, 11, 98, 37, 412; JL, 9193.

[5] *PL*, Eugene III, no. 18, 19, 36, 101, 329, 559, 560, 561, 562, 563, 564, 565, 566; *APRI* 1, no. 212 (JL, 9115); *Historiae Tornacenses*, 345-46 (JL, 8889, 8890).

[6] *PL*, Lucius II, no. 18; *PL*, Eugene III, no. 75 (*APRI* 3, no. 72; JL, 8850), 129 (*APRI* 3, no. 78; JL, 8949).

[7] PUE3, no. 43 (JL, 8471a), 68 (JL, 9143a), 84.

[8] PUE2, no. 45; PUE3, no. 69, 70, 71. A privilege of protection was also issued and renewed under Eugene III for the Augustinian canons of the English church of St. John, Lanthony (PUE1, no. 35, 39); while a privilege of protection was issued for the monastery of Bury St. Edmunds by Lucius II and renewed under Eugene (PUE3, no. 44 [JL, 8561], 64 [JL, 9093]).

[9] PUS2, no. 43, 45, 51.

[10] PUS2, no. 57, 68; PUP, no. 49; PUF7, Nach. Gott., no. 36.

[11] PUF7, Nach. Gott., no. 36; PUS2, no. 68; see also, PUS2, no. 67.

ordering them to pay it duly to the same bishop.[1] Lastly, the church of the Holy Sepulchre in far-off Jerusalem procured no less than four renewals of its privilege of protection in this period, despite the arduous trek: one each under Celestine II and Lucius II, and two under Eugene III;[2] while at least three other papal letters also concerned the house.[3]

There was one final factor which may have mitigated the obvious disadvantage of expense in bringing one's case to 'Rome.' It has been suggested, for instance, that by ca. 1200, in cases involving delegation, it was usual for the losing party to pay the expenses and costs of the other.[4] And despite the criticism of Bernard of Clairvaux to the contrary, there is evidence that as early as the pontificate of Innocent II the curia was attempting in special cases to subsidise or defray the costs of travel and litigation incurred by litigants, especially those unduly taxed by their opponents by ordering those opponents to pay the other party's expenses.[5] All in all, however, the fact that only half a dozen or so letters made such requirements suggests in itself that this was an exception to the rule—otherwise, the record provides no insight into the question of expenses. This notwithstanding, in total the systems of papal justice by the mid-twelfth century offered certain distinct advantages to potential litigants and petitioners; or else in many cases the costs and trouble of prosecuting one's business at 'Rome' were extenuated by various factors. At the same time, resistance to papal mandates and sentences itself can be easily overstressed: enforcement of central authority in the context of the twelfth century was never perfect even for the most effectual governments. The English, French, and German kings in this period all fought wars against their own vassals and subjects. At the same time, recourse to Rome was frequently sought simply on account of the ineffectualness of local authority, especially in opposition to the more powerful magnates of the land. More than anything, when the problems associated with the papal systems are weighed against the bulk of correspondence, one departs with the impression that compliance with and ultimate execution of papal mandates and decisions was the basic rule, as the majority of existing letters of justice was followed by no sequel indicating failure or other complications. Likewise, the majority of letters concerning clerical *controversiae* provided no indication of undue complications, excessive prolongation, or practices of chicanery. The basic conclusion is that, by and large, and for its time, the system worked; and it probably worked well. In fact, shorn of all other considerations, this conclusion would be true if on no other basis than the profound demand

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[1] PUP, no. 49; see also, PUS1, no. 57. At least three privileges, each more or less a privilege of protection, were also renewed for the Iberian archbishop of Braga: one under Lucius II (PUP, no. 41; see, PUP, no. 30, for Innocent II's privilege); and two under Eugene (PUP, no. 47, 50).

[2] PUKHL, no. 52 (*PL*, Celestine II, no. 26; *RRH*, no. 220; JL, 8479), 55 (*PL*, Lucius II, no. 63; *RRH*, no. 225; JL, 8652), 62 (*PL*, Eugene III, no. 122; *RRH*, no. 241; JL, 8939), 64 (*PL*, Eugene III, no. 300; *RRH*, no. 249; JL, 9260).

[3] *PL*, Celestine II, no. 28 (*RRH*, no. 221; JL, 8481), 29 (*RRH*, no. 222; JL, 8482); *APRI* 2, no. 396 (JL, 9396).

[4] J. Sayers, *Judges Delegate*, 267.

[5] See, on this, ch. 5.3 and 6.3.

which continued to be placed on the system—despite its shortcomings.

8 *CLERICAL* TEMPORALIA

Ultimately, an exact assessment of either the relative efficiency or fairness of the papal systems of justice in the period 1143-53 is impossible to come by, and one must be content with the fact that the papal record of the same period shows that clerics were taking their business, and especially their lawsuits, to 'Rome' in great numbers. The more important question then follows why these clerics were apparently either litigating or pressing criminal, proprietary, or jurisdictional claims with such great frequency, effort, and diligence in the first place. Part of the answer is that clerical properties were always vulnerable to attacks and appropriations. Concomitant with this, as the Church expanded, the delineation of jurisdictions, including all of the assorted *iura* of the multiple corporate ecclesiastical entities, was not well defined. More importantly, these entities and their members were necessarily active members, in many cases leaders, in the economies of their territories and beyond. As R.W. Southern understated for this period: 'As population grew, the problems of rights and obligations became more numerous and difficult.'[1] The heads and members of ecclesiastical corporations were not 'owners' *per se* of ecclesiastical property; thus, they inherited an obligation to defend it and uphold rights, their *iura*, at all costs.[2] The problems occupied the canonists as well. K. Pennington noted that the key concept in understanding the constitutional thought of the canonists in the twelfth and thirteenth centuries was the preservation of the 'existing rights of all churches.' They conceived of the Church as possessing a bewildering variety of rights whose origins lay in grants, customary usage, privilege, or canonical practice.[3]

The European Church in the mid-twelfth century was therefore turning to the papacy as, and simultaneously transforming it into, its own temporal protector, arbiter, and central deeding office. Yet, the need for the confirmation, protection, and adjudication of a central or supreme authority, as far as churchmen went, was predicated less on a vulnerability to secular depredation—which itself was certainly an acute enough problem—than competition between clerics themselves.[4] In the *De consideratione* Bernard of Clairvaux rightly wrote that a new 'venom has infected practically the entire Catholic Church. For, even while we are in the Church we each seek our own and envying one another and provoking one another we are stirred to hatred,

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[1] R.W. Southern, *Western Society and the Church*, 35; see also, J.C. Moore, *Innocent III*, 303-04.
[2] On the complicated, ill-defined nature of ecclesiastical corporations in this period, see B. Tierney, *Foundations*, 97-131, esp. 97, 104-05, 110; see also, on the thirteenth century debate over the question of ownership of ecclesiastical possessions, J. Coleman, 'The Two Jurisdictions: Theological and Legal Justifications of Church Property in the Thirteenth Century,' *Studies in Church History* 24 (1987), 75-110.
[3] K. Pennington, *Papal Monarchy*, 175.
[4] See, J. Gilchrist, *Economic Activity*, 39; F.W. Maitland, *Canon Law*, 120-21.

aroused in injuries, excited to arguments; we mock deceitfully, we are quick to slander, we burst out in cursing, we are oppressed by the stronger and we in turn oppress those who are weaker.' He blamed Eugene III because 'ambition is the cross of those who seek after him,' and 'wears down the threshold of the apostles (*limina apostolorum*).' How could the pope, he asked, please everyone when in fact he tormented all: 'Nothing is more excruciating, nothing more disturbing; yet nothing is more frequented by miserable mortals than its business...Does your palace not resound all day with the voices of ambition? Is it not for its profit that all of the learning of the laws and canons is sweated over? Is it not for its spoils that Italian greed longs with unquenchable thirst? What not only interrupts but puts an end to even your spiritual endeavours?'[1] Bernard's own dramatic language notwithstanding, clerical competition, along with the redress of clerics despoiled by laymen, was the principal concern of papal practice as it was reflected in the daily business of the chancery. In this period such competition was rampant amongst secular and regular prelates, monks, regular canons, the secular clergy, and indiscriminately between all and sundry—that is, there is no traceable broader rivalry between the secular and regular clergy or the like as far as the causes and plaints brought before the curia were concerned.[2]

8.2 CLERICAL COMPETITION

At least seventy-seven of the total papal letters (7.3%) of the period 1143-53 specifically concerned tithes (*decimae*).[3] At least forty-six of these seventy-five letters (sixty-one percent) also

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[1] *De consideratione*, Bk. 3. I. 5 (84-85). Elsewhere Bernard added that the 'Church is filled ambitious men; in our age she shudders at the calculated striving of ambition no more than a den of thieves shudders at the spoils taken from travellers.' *De consideratione*, Bk. 1. X. 13 (45).

[2] See, J. Gilchrist, *Economic Activity*, 47; J. Sayers, *Judges Delegate*, xxii-xxv, 212-213; C.R. Cheney, *Innocent III and England*, 176.

[3] *PL*, Celestine II, no. 4, 10; *PL*, Lucius II, no. 23, 50; *PL*, Eugene III, no. 100, 183, 378, 459, 460, 472, 485, 486, 505, 512, 532, 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 67; *IP* 5, 251/25, 181/6; JL, 9654), 548, 580; Mansi 21, 713-18 (JL 2, 52-53), Council of Reims, c. 8; JL, 8576 (P. Classen, *Gerhoh von Reichersberg*, 342, no. 32), 8818 (*PL*, Eugene III, no. 26), 9201 (*PL*, Eugene III, no. 263); *IP* 5, 315/3; *IP* 6/1, 268/20, *268/19, *325/12, 122/2 (*PL*, Eugene III, no. 306; JL, 9274/9276); *IP* 6/2, *136/20; *IP* 7/1, *273/3; Otto of Freising, *Two Cities*, Bk. 7. XXXI. 331-32 (*PL*, Lucius II, no. 83; Mansi 21, 609; JL, 8684); *Antiquitates* 5, 1013 (*IP* 6/2, *391/1—a *charta* of Gotifredus, bishop of Luni); *APRI* 1, no. 204 (JL, 8919), 207 (JL, 8996); *APRI* 2, no. 385 (JL, 8695), 387 (JL, 8774), 388 (JL, 8775), 389 (JL, 8814), 391 (JL, 8784); *APRI* 3, no. 55 (JL, 8516), 84 (JL, 9007), 91 (JL, 9292); *EPRI*, no. 208 (JL, 9663); Archives historiques du Poitou 2, 33-34, no. 21 (JL, 8842); *Historia monasterii S. Augustini Cantuariensis*, 402, no. 30 (JL, 9537); PUE3, no. 47, 49, 54, 65, 90; PUE1, no. 38; PUF3, no. 32, 33; PUF5, no. 74; PUF2, no. 27, 42, 43 (JL, 8961), 48, 65, 69; PUF7, no. 56; PUF6, no. 54; PUF1, no. 43, 52; PUF8, no. 19 (JL, 8487), 42; PUTJ1, no. 10, 13, 17; PU in Florenz, no. 11 (*IP* 3, 138/11), 12 (*IP* 3, 138/12), 14 (*IP* 3, 138/15); PU in Padova, no. 3 (*IP* 7/1, 315/6); PUF1, Nach. Gott., no. 30 (JL, 8819); PUF5, Nach. Gott., no. 22 (JL, 8884); PU in westlichen Toscana, no. 6 (*IP* 3, 432/100; JL, 9481); PU in Venetien, no. 7 (*IP* 7/1, 106/1); PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9).

concerned clerical controversies.[1] Indeed, ecclesiastical tithes had taken on renewed significance under the reforming popes who emphasised the reclamation and retention of tithes from lay hands so that the crime of lay possession was equated with simony. This emphasis continued into the twelfth century, with the reclamation of new land and church expansion, and leading to the fitful acceptance, in fact anyway, of monastic possession of churches and tithes, and the issuing of the various, sometimes confusing, species of papal tithe exemption or immunity, which as a rule, as granted in the privileges of protection of the period 1143-53, were reserved almost exclusively for poorer fledging communities and very seldom included in those privileges which stipulated other various spiritual exemptions or immunities, and vice versa.[2] But, by no later than the 1140s the

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[1] Around nine percent of the total letters concerning clerical *controversiae*: *PL*, Celestine II, no. 4, 10; *PL*, Lucius II, no. 23; *PL*, Eugene III, no. 183, 378, 485, 486, 505, 512, 532, 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 67; *IP* 5, 251/25, 181/6; JL, 9654), 548, 580; JL, 8576 (P. Classen, *Gerhoh von Reichersberg*, 342, no. 32), 9201 (*PL*, Eugene III, no. 263); *IP* 6/1, 268/20, *268/19, *325/12; *IP* 6/2, *136/20; *IP* 7/1, *273/3; *APRI* 1, no. 204 (JL, 8919), 207 (JL, 8996); *APRI* 2, no. 385 (JL, 8695), 387 (JL, 8774), 388 (JL, 8775), 389 (JL, 8814); *APRI* 3, no. 55 (JL, 8516); Archives historiques du Poitou 2, 33-34, no. 21 (JL, 8842); PUE3, no. 47, 49, 54, 90; PUE1, no. 38; PUF3, no. 32, 33; PUF5, no. 74; PUF2, no. 27, 48; PUF6, no. 54; PUF1, no. 52; PU in Florenz, no. 11 (*IP* 3, 138/11), 12 (*IP* 3, 138/12), 14 (*IP* 3, 138/15); PU in Padova, no. 3 (*IP* 7/1, 315/6); PU in Venetien, no. 7 (*IP* 7/1, 106/1); PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9). For instance, in late 1143 Celestine II wrote to the provost and canons of Rosate: 'It has been enacted that religious persons should not be compelled to pay tithes from the labours which they work through their own hands or expenses, or from the nourishment of their beasts. Contrary to which, the clamour has been brought to our ears that you are exacting tithes from the nuns of S. Maria di Montano, and are violently extorting them from them. Therefore, because it has been allowed to none to deviate without risking his own status with regard to these things which are enacted by the apostolic see, we order you...to presume by no means to exact tithes from the same nuns, but if you trust that you hold any justice in the same place, demonstrate it in our presence.' *PL*, Celestine II, no. 4.

[2] At least 200 privileges of protection issued under Celestine II, Lucius II, and Eugene III conveyed or stipulated some form of tithe exemption or immunity—over one-fifth of all privileges of protection issued in the same period. At least twenty-eight (13.1% of the total) occurred under Celestine II and Lucius II: *PL*, Celestine II, no. 13, 33, 38, 40; *PL*, Lucius II, no. 1, 4, 6, 31, 45, 58, 66, 73, 76, 93; *APRI* 3, no. 49 (JL, 8491), 57 (JL, 8596), 59 (JL, 8649); PUE1, no. 31; PUF2, no. 25 (JL, 8670), 26 (JL, 8675); PUP, no. 42; PUF1, Nach. Gott., no. 23 (JL, 8511), 25 (JL, 8527); PUF2, Nach. Gott. 7; PUF6, Nach. Gott., no. 13 (JL, 8623), 14 (JL, 8694); PUF7, Nach. Gott., no. 25 (JL, 8591); PU in Parma und Piacenza, no. 17 (*IP* 5, *502/11). At least thirty-six (18.6%) occurred under Eugene III through 1146: *PL*, Eugene III, no. 12, 23, 27, 41, 44, 49, 50, 53, 54, 58, 74, 84, 109 (P. Classen, *Gerhoh von Reichersberg*, 345, no. 40; JL, 8914), 136, 137, 138 (*APRI* 3, no. 81; JL, 8971), 140, 143; JL, 8770; *APRI* 1, no. 200 (JL, 8802); *APRI* 3, no. 68 (JL, 8778); PUE1, no. 33; PUE2, no. 44; PUE3, no. 53; PUF2, no. 38 (*PL*, Eugene III, no. 79; JL, 8857); PUF4, no. 44 (JL, 8796a); PUF5, no. 68 (*PL*, Eugene III, no. 106; JL, 8909); PUN, no. 49; PUF6, no. 58 (JL, 8938); PUF1, Nach. Gott., no. 28 (JL, 8727); PUF2, Nach. Gott., no. 8; PUF5, Nach. Gott., no. 21; PUF7, Nach. Gott., no. 31 (JL, 8843); Ältere PU in den päpstlichen Registern 3, no. 5; PU in Brescia und Bergamo, no. 6 (*IP* 6/1, 351/3; JL, 8979); PU in Turin, no. 10. At least eighty-four (37%) occurred under Eugene 1147-8 July 1148: *PL*, Eugene III, no. 153, 154, 156, 158, 160, 161, 162, 163, 165, 167, 172, 173, 176/177, 178, 179, 180, 181, 182, 188, 189, 190, 193, 206, 207, 211, 213, 215, 217 (*APRI* 3, no. 86; JL, 9116), 220, 223, 235, 238, 252, 258, 267, 293; JL, 9025, 9066, 9143, 9273; *APRI* 1, no. 209 (JL, 9041), 210 (JL, 9021), 214 (JL, 9125), 215 (JL, 9137), 216 (JL, 9138), 219 (JL, 9194), 221 (JL, 9234); *APRI* 2, no. 395 (JL, 9179); *APRI* 3, no. 85 (JL, 9010); PUE1, no. 37 (*PL*, Eugene III, no. 184; JL, 9060), 42; PUE3, no. 67, 75; PUF1, no. 45, 46; PUF2, no. 49 (JL, 9173), 51 (JL, 9129), 55 (JL, 9175), 56 (JL, 9198); PUF3, no. 28; PUF4, no. 48 (JL, 9032), 49 (JL, 9035), 50 (JL, 9047), 52 (JL, 9056), 53, 55 (JL, 9252); PUF5, no. 75; PUF7, no. 58 (JL, 9027), 59, 60 (JL, 9037), 61 (JL, 9633), 62 (JL, 9107), 63, 64; PUN, no. 60 (JL, 9016), 62, 63 (JL, 9068), 66 (*PL*, Eugene III, no. 539; JL, 9157); PUF1, Nach. Gott., no. 32, 33 (JL, 9112), 35; PUF5, Nach. Gott., no. 23; PUF7, Nach. Gott., no. 33 (JL, 8994); PU in Florenz, no. 13 (JL, 8993). At least fifty-three (16.8%) occurred under Eugene after 8 July 1148, including the undated privileges: *PL*, Eugene III, no. 328,

papacy's interest in tithes in practice had all but ceased to concern lay interference with this most important of the Church's 'spiritual' taxes, although canon eight of the Council of Reims (1148) would blandly pronounce that 'laymen ought not to possess tithes.'[1] Rather, tithes had simply become one aspect of the manifold network of claims over rights and properties which churchmen were contesting between themselves or otherwise bringing before the curia.

Conversely, as noted, a great amount of the various cases brought before the curia involved decidedly petty stakes. In fact, as early as 1096 Urban II had complained of having to deal with trivial cases;[2] and by the mid-twelfth century the situation had certainly not changed. For example, in May 1145-46 Eugene III was obliged to write to the archdeacon, provost, and canons of the church of Genoa that it had come to him that on the occasion of a certain annual feast which they were accustomed to receive from the abbot of S. Stefano and his brethren, 'on account of that which you consume in their refectory, in which many things as much in food as in other things are recognised to occur contrary to the rule of St. Benedict, the brethren themselves are very much disturbed and often incited to commotion and scandal.' As a result, he ordered them, 'since it is unfitting and entirely contrary to religion that on account of bodily feasts spiritual rest is lost,' to take the feast every year in their own refectory or negotiate reasonable expenses for it with the abbot, 'and moreover by no means disturb the aforesaid monastery and brethren serving the Lord in the same place over this.' Lastly, he warned, 'if you should neglect to do so, we shall not allow your contempt to pass by unpunished.'[3] Petty and trifling as it must have seemed for Christendom's highest tribunal, the cause at least had a tone of clerical discipline. The fact remained, however, that the pope was exercising his supreme authority for the sake of a single yearly dinner for a small group of men. In many similar cases, the expenses entailed by the parties involved in bringing a cause through the papal processes must have far exceeded the value of the claims themselves. As R.W. Southern rightly observed: 'the litigation of corporate bodies had some of the characteristics of an arms race: it could not be stopped without abandoning some

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338, 365, 384, 405, 426, 436, 439, 451, 457, 489, 490, 509, 510, 575, 592; JL, 9680; *IP* 10, 96/2; *APRI* 1, no. 225 (JL, 9601); *APRI* 2, no. 397 (*PL*, Eugene III, no. 396; JL, 9405); *APRI* 3, no. 89 (JL, 9282), 92 (JL, 9309), 104 (JL, 9493), 105 (JL, 9497), 107 (JL, 9561), 111 (JL, 9622); PUE1, no. 48 (JL, 9504); PUE3, no. 76, 77, 88; PUF2, no. 62; PUF4, no. 56 (JL, 9310), 60, 61, 62 (JL, 9713); PUF5, no. 78, 79; PUF7, no. 67, 72 (JL, 9626), 73 (JL, 9635); PUTJ2, no. 7 ; PUKHL, no. 65 (JL, 9469); Ältere PU in den päpstlichen Registern 3, no. 7 (PUP, no. 48); PUS2, no. 61 (Nachträge zu den PU in Italiens 8, no. 5), 64 (JL, 9571), 65; PUF1, Nach. Gott., no. 40, 41; PUF2, Nach. Gott., no. 16; PUF5, Nach. Gott., no. 25; PUF6, Nach. Gott., no. 17; PUF7, Nach. Gott., no. 37 (JL, 9712); PU in Turin, no. 12 (JL, 9485). This would make 173 (23.5%) for Eugene's entire pontificate, and eighty-nine (17.5%) for Eugene through 1146 and after 8 July 1148 including undated privileges only. On tithe exemption, or immunity, in general, see, G. Constable, *Monastic Tithes: From their Origins to the Twelfth Century* (Cambridge, 1964), 83-309, esp. 198-309; also, G. Constable, *Spiritualia*, 304-31.

[1] Mansi 21, 713-18 (JL 2, 52-53), Council of Reims, c. 8.

[2] A. Becker, *Urban II* 1, 219, citing, JL, 5642; also, I.S. Robinson, *Papacy*, 183, 195.

[3] *APRI* 2, no. 390 (JL, 8816).

lawful claim, and no one was willing to do this. The rights of corporations are for ever: the expenses of a lawsuit are only for today. No one would sacrifice the future for a few pounds. So the flood of litigation rose. In 1144 it was just beginning, but its main lines were already laid down.'[1]

Naturally, then, when in 1146 Eugene III restored the bishopric of Tournai, which had been attached to the diocese of Noyon, he expected the worst fulmination and resistance.[2] On 15 March 1146 the pope sent out solicitous letters each to the canons of the church of Tournai,[3] the clergy and populace of Tournai,[4] the suffragans of the church of Reims,[5] the bishops of Arras and Therouanne,[6] Bernard of Clairvaux,[7] and King Louis VII of France,[8] requesting that they all do their part in seeing that the papal act be peacefully put into effect: the pope was apparently concerned that either Louis, the count of Flanders, or the bishop of Noyon would oppose the act, especially as the pope had made specific stipulations assigning the episcopal revenues and military obligations pertaining to the restored diocese to its new bishop. Nevertheless, despite the pope's manifest anxiety over the matter, the *Historiae Tornacenses* reported that after Eugene had sent these intercessory letters to the king, the count of Flanders, and the citizens of Tournai, entreating them all 'to assent kindly to the bishop whom he had ordained to the honour of God and for the sake of their souls to pay the episcopal dues continuously to him,' they all duly 'assented to the petition of the pope within a few short days through the intervention of the religious man, Alviso, the bishop of Arras. And thus, we received the new bishop on the pontifical see.' Another letter was sent to the bishop of Noyon himself, the chronicle reported, 'in which he was exhorted to bear patiently the Tournaise to have their own bishops, and presume not through himself or through a person subjected to him to inflict any molestation upon him. He also ordered the metropolitan and suffragan bishops of Reims insofar as they would maintain him and aid him in all things and also

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[1] R.W. Southern, *Western Society and the Church*, 115-16, referring in context to the cause, under Lucius II, at PUE1, no. 29.

[2] See also, for this, *Historiae Tornacenses*, 340-46, esp. 344-46; *Herimanni liber de restauratione S. Martini Tornacensis*, 318-27, esp. 326; M. Horn, *Studien*, 127-31; also, I.S. Robinson, *Papacy*, 113.

[3] *EPRI*, no. 195 (JL, 8887).

[4] *PL*, Eugene III, no. 96.

[5] *EPRI*, no. 194 (JL, 8888).

[6] *PL*, Eugene III, no. 98.

[7] *PL*, Eugene III, no. 99.

[8] The letter informed him that the pope was sure that the act was 'about to rebound to the great profit of the kingdom and crown,' and therefore admonished him to allow 'no one's wicked suggestion inflame your heart over this.' *PL*, Eugene III, no. 97. I.S. Robinson, citing M. Pacaut, *Louis VII et la élections épiscopales dans le royaume de France* (Bibliothèque de la Société d'histoire ecclésiastique de la France: Paris, 1957), 37, stated that on the basis of this letter, the 'twelfth-century papacy was inconsistent in its attitude towards royal involvement in episcopal elections,' as Eugene 'assumed that King Louis VII could initiate an episcopal election by means of the *licentia eligendi* and could give his confirmation to the elect.' I.S. Robinson, *Institutions*, 455. However, the full context of the cause clearly indicated that the pope considered the king's involvement to be purely one of enforcement of the papal act *ipso facto*, along with the divers other parties and prelates.

admonish the bishop of Noyon to desist from any presumption and come to a peace with him. But the same Simon'—the bishop of Noyon, it was assured—'was a most gentle man...and thus it came to pass that with neither deed nor word did he attempt to go against the orders of the pope.'[1] The unique range and substance of these letters would suggest rather clearly that the pope anticipated a severe reaction, not only from the clerical actors but also the interested lay powers, whose position the pope took care not to be seen trampling upon. And indeed, the entire papal record indicates that clerical complaisance in the face of any potential expense or loss was quite the exception to the rule. Similarly, these letters exposed the interrelated problem of enforcement, and the curia's dependence for it upon the provincial prelates and even secular princes.

In the context of these problems, the outcome of clerical competition could lead to physical, even horrific, violence between clerics, including the religious. As a special case study, and because of its unusually colourful rhetoric, a series of two papal letters concerning a longstanding and violent struggle over tithes between the Cluniac house of Gigny and the young Cistercian house of Le Miroir deserves careful attention. On 5 March 1152 Eugene wrote to the archbishop of Lyons: 'The wickedness of those at Gigny who profess the monastic life, as far as the name goes, truly blaspheme the solemn oath of the undertaking, and with how great madness they have raged against our esteemed sons from Le Miroir and their goods over the course of many years, it has the more fully come to the knowledge of your fraternity as the places themselves exist more near to you.' And although Eugene and Innocent II had both shown 'much diligence...so that they might return to the heart and desist from the molestation of our aforementioned sons,' instead those brothers, 'filled with baseness' and 'mingling what is lawful and criminal equally,' were recalling before their eyes neither 'the danger of their own souls,' nor the 'opprobrium' they were bringing upon their order, nor 'reverence of man, nor fear of God.' But, as if in a vicious circle, and disregarding their monastic affinity and even the concord they had previously made with the same brethren through Bernard of Clairvaux and Peter of Cluny, and 'seized by the customary furore, they are adding worse things to the previous ones; and exercising barbarous fury against our aforementioned sons, as much through themselves as through certain ministers of the devil, whose support they are begging, they have not wavered to destroy their persons, plunder their goods, destroy their homes, and perform other proofs of fury against them with diabolical temerity.'

However, it followed, although as a result 'they have before now deserved to be cut off from the body of the Church by the apostolic axe, we have delayed up to now, believing them about to recover their senses at any time and about to desist from the persecution of our aforementioned sons.' But, 'because now they have become so rotten in their own manure that

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[1] *Historiae Tornacenses*, 345-46 (JL, 8889, 8890).

unless Jesus lets out His own great voice they should not be imagined to be extricated from the stench of the grave,' Eugene ordered the archbishop of Lyons 'to compel them with all coercive force to restore all those things seized to our forenamed sons, and repair all damages inflicted, and perform fit satisfaction for the injuries, and desist from assailing them further.' And if they would not comply with all injunctions within thirty days after this 'warning,' the archbishop was instructed to come together with the archbishop of Besançon and solemnly interdict their place itself along with all of its cells and churches and subject to excommunication the prior, hostiller, deacon, and others 'who are the principals of this wickedness, and also all who are of one mind in this evil,' as well as those 'who have presumed to furnish them with counsel and aid.'[1]

The conflict between these neighbouring houses had begun between 1135 and 1137, and centred upon Le Miroir's refusal to pay Gigny tithes on the basis that the entire Cistercian Order had received a general tithe exemption from Innocent II—a gesture of gratitude to the abbot of Clairvaux for the role he played in ensuring the victory of Innocent's party in the schism of 1130. Cistercian tithes have been reckoned to have constituted roughly one-tenth of all Cluniac revenues. But by 1137 the conflict had fallen silent, only to be rekindled in 1151—the situation was perhaps aggravated as a result of Lucius II and Eugene III's confirmations of Cluny's own extensive tithe privileges.[2] Thus, nine days after the letter to the archbishop of Lyons the pope wrote to Abbot Peter and 'the universal assembly of Cluny,' opening with a singularly excoriating *arenga*: 'Having been intoxicated, just as Jeremiah says [Jer. 23.15], with wormwood and overcome by exasperation and choler, we are compelled to send such a letter to you, of such a kind as furnishes the effect and the greatness of the dolour recommends. Indeed, the distasteful and lamentable subject-matter impels us to rush forth in a doleful voice, and compels us to let out the indignation which is holding itself in our heart, although belatedly.' For, 'Even if you would have led yourself away into forgetfulness,' the pope reminded the abbot, 'nevertheless, it has not escaped our knowledge and nearly the entire Western Church recognises how much the church of Cluny, as much in the head as in the members, has been cherished by the apostolic see from the time of its foundation all the way up to now, how much it has been aided in its various needs and always exalted unto better things.' And yet, 'which we do not say without grave sadness, we see our prayers, exhortations, and orders so turned away by the majority of you into contempt, that we are able to say with prophet: "We have brought up and exalted sons; however, they themselves have contemned us [Is. 1. 2]."'

As a piece of papal rhetoric, the degree of acerbity here was unique, especially as it was

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[1] *PL*, Eugene III, no. 500 (JL, 9562, for the date).

[2] See, *PL*, Lucius II, no. 49; *PL*, Eugene III, no. 80, 532. An account of the attacks of Gigny in 1151 had probably been recounted to Eugene through a letter of Bernard of Clairvaux; on this, see, G. Constable, 'Cluniac Tithes and the Controversy between Gigny and Le Miroir,' *Revue bénédictine* 70 (1960), 591-624, here at, 608-24.

directed against those favourite sons of Cluny, as the terms of the letter themselves took pains to point out. For, 'with how great tyranny,' it continued, 'your own brothers from Gigny have raged against our children, the brethren of Le Miroir, over the course of many years now it has plainly come to your knowledge, even if you dissemble. Truly, just as our solicitude would have directed its energy towards constraining their insanity, it is demonstrated in the most open oppression of evil to those who know rightly.' For, those Cluniacs, the pope detailed, 'after depredating the orphans, despoil the poor.' Still, 'their gluttony has not been sated; and having plundered the substance from the granges and massacred with barbarous ferocity the servants of Christ, so that nothing for the future would come to pass for them, they now have transformed the same estate itself, on which they were living for the servitude of their own head, into a desert of destitution, for they have burned the bulwarks, plundered the spoils, and driven out the inhabitants themselves under swords and cudgels from their own borders.' Again, it bears repeating that the subject-matter in question did not concern the actions of martial laymen, or even secular clerics, but the violent rivalry of monastic 'brothers.' Not surprisingly then the pope would bewail: 'Oh the pain! It is conceded to the poorest in this world to dwell hard by the palace of their king, and the yoked beast sleeps under one roof with its lord; truly, it is not allowed to our children to place their domicile hard by your brethren, and still less in the same *villa*, but neither even to be at hand in the same diocese for the divine services.'

Cluny's own delinquency, rather than papal inefficacy, was blamed in this cause: 'Indeed, if your diligence from former times had directed its energy toward constraining them, and our patience had not been so long abused,' the abbot was charged, 'neither would their correction have been allowed to be so far put off, nor would our members have been able to be so far torn to pieces.' But, 'truly, because you have looked back at the excesses of your own, and the miseries of our own, with a dissembling and mocking eye, the deed has been done in our days which will not be believed when it is told, as nothing comparable has yet come to pass in Israel.' Therefore, the pope, tacitly acknowledging his own limitations in quelling and repairing such a complicated—messy—and embarrassing state of affairs, appealed, albeit with threats and despite his own previous condemnation and despair of Cluny's disposition in the cause, to Cluny's debt to her long-time papal patron: 'Therefore, since neither does the mother forget her sons, nor can we not feel the pains of our children, because you have contemned to oppose such great evil, we order you now at least to be solicitous concerning their correction. For, although we cannot impose a fitting penalty upon such great sin, it is necessary at least to restore those things which have fallen apart into a due status.' Accordingly, the pope ordered them 'to trust concerning our support and the support of the apostolic see in your causes, and so cause all of those things seized to be restored to our forenamed sons from Le Miroir, the injuries inflicted upon them to be fully repaired, and satisfaction so made for such great evil that not merely with words but with works

and in truth you might be proved to be aggrieved on account of the contempt of the apostolic see and our affliction.' Otherwise, he assured, 'you will have known yourselves to be most severely avenged, so that you, unwilling, should at least be compelled to show prompt obedience to our orders, and to be more solicitously disposed to the restraint of those who walk about among you turbulently.'[1]

In the following months the parties, along with the abbots Bernard of Clairvaux and Peter of Cluny, would apparently come together to negotiate a peace and reparations. The talks proved entirely unsuccessful, however, so that Bernard would write back to Eugene in June 1152 complaining that the terms being offered by Gigny were so risible that a resolution was utterly impossible.[2] In fact, the case would not be resolved until March 1155 when it was finally submitted to arbitration to another archbishop of Lyons and the bishop of Winchester, perhaps through the intervention of a cardinal legate.[3] Nevertheless, despite the pope's apparent shortcomings in promptly repairing the situation, the case poignantly demonstrated how, in a self-governing and self-policing Church, the papacy had inherited the leadership of a culture of pervasive clerical competition. And while the level of the ferocity of this culture did not often reach such a desperate pitch, as it did in this particular case, the competition itself was rampant. In this sense, papal anathema clauses to documents were addressed just as often against potential clerical transgressors as lay.[4] And in this context, the curia's role as judge and temporal protector was prioritised.

8.3 CLERICAL DUALITY AND THE 'PARADOX' OF WEALTH

It has been pointed out that all property was a source of conflict in the Middle Ages.[5] J. Sayers, in her study of the English Church in the early thirteenth century, noted that most religious houses were litigious, and that the majority of suits going to Rome involved property and possessions.[6] G. Constable observed that the monastic annals and charters of the eleventh and twelfth centuries were filled with 'innumerable disputes and law-suits' caused by ecclesiastical possessions and

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[1] Appendix 1, no. 296 (*PL*, Eugene III, no. 499).
[2] Bernard of Clairvaux, *Letters*, no. 283 (B.S. James, no. 353).
[3] see, G. Constable, *Cluniac Tithes and the Controversy between Gigny and Le Miroir*, 608-624.
[4] See, *PL*, Celestine II, no. 28 (*RRH*, no. 221; JL, 8481); *PL*, Lucius II, no. 23, 25, 36, 40, 48, 91; *PL*, Eugene III, no. 2, 126, 152, 222, 174, 513, 570/71, 577; *APRI* 1, no. 211 (JL, 9074); *APRI* 3, no. 55 (JL, 8516), 76 (*IP* 3, 325/29; *IP* 10 383/42; JL, 8929); PUE2, no. 43, 66; PUF5, no. 62, 72; PUF6, no. 61; PUF1, no. 43; PUF2, no. 61 (JL, 9437); PUTJ1, no. 13; PUKHL, no. 50, 58 (*PL*, Lucius II, no. 88; JL, 8700); PU in westlichen Toscana, no. 6 (*IP* 3, 432/100; JL, 9481); PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); Römische Analekten, 35-36, no. 3 (*IP* 1, 77/20); Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4).
[5] G.G. Coulton, *Five Centuries of Religion* 3 (Cambridge Studies in Medieval Life and Thought: Cambridge, 1923-), 507.
[6] J. Sayers, *Judges Delegate*, 98, 178-204, 212.

revenues. Such controversies, he added, which often dragged on for years and through multiple courts, 'filled the hearts of the reformers with alarm.'[1] In the period 1143-53, in fact, nearly two-thirds of all letters concerning clerical *controversiae* also concerned clerical temporalities.[2] Thus, in February 1153 Eugene III opened a letter confirming for the prior and canons of St. Etienne, Le Plessis-Grimoult several churches donated by the bishop of Bayeux—a confirmation granted, the letter stated, 'according to the petition' of the same bishop—because 'the life and conversion of the religious demand urgently a fuller peace and tranquillity and seek to be by no means implicated for the sake of the profit, from contentious suits and secular tumults, of earthly things.'[3] In the context of the evident rampant clerical competition of the period, such a statement was both, from the papal point of view, ironic and poignant: the preservation of the Church's earthly *res* was a real and taxing, if deplorable, preoccupation.

In these matters, Bernard of Clairvaux's observations were distinctly accurate. For Bernard, the bishops of his time were slavishly devoted to their possessions and to accounts of their possessions.[4] Speaking indirectly of the pope's own territorial-political 'policy,' Bernard marvelled: 'A strange situation. Bishops have more than enough people on hand to whom they can entrust souls, but they find no one to whom they can commit their paltry possessions; obviously they have made the best evaluation of the situation—they have great concern for the least matters, little or no concern for the greatest. But as we are clearly given to understand, we more patiently bear Christ's loss than our own.' For, Bernard lamented, 'every day we carefully review the expenses of the day, but are unaware of the continual losses of the Lord's flock. There is a daily dispute with the servants concerning the price of food and the number of loaves of bread; rarely indeed is a meeting convened with the priests concerning the people's sins. An ass falls and there is someone to raise her up; a soul perishes and there is no one who gives it a thought.' For Bernard, the priorities of clerics in his day were absurdly ordered: 'How much more tolerantly ought we to have sustained the loss of material goods than of spiritual?' Indeed, without the benefit of a comprehensive account of the record for papal dealings in this period, it is easy to minimise the sincerity and urgency of the abbot's complaints. But the abbot also understood clearly enough, if regrettably, that the pope was becoming as much a prince in the 'Papal States' as he was Christ's 'vicar' to the whole world, and beseeched him, who taught others, to teach himself likewise to value himself above his possessions: 'A stream hollows out the land where it flows; so, the flow of temporal things erodes the conscience.' By dwelling on secular business, the pope was damaging both his own soul and office. He exhorted Eugene to use every means to avert

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[1] G. Constable, *Spiritualia*, 316-17.
[2] Cf., the catalogues in Appendix 3.
[3] Appendix 1, no. 172 (PUF2, no. 66 [JL, 9685]).
[4] *De consideratione*, Bk. 4. VI. 19 (133).

himself from 'the onslaught of these things,' to 'remain unaware of many things, neglect even more, and forget about some;' and allow his fellow bishops to learn from his example not to deport themselves as princes of this world.[1]

Bernard also assailed the pope because his palace resounded day and night with the laws—not the laws of God but of Justinian. According to E. Kennan, for Bernard, the rule of Scripture prescribed that the pope should remain confined solely to a spiritual responsibility. Instead, he was abjuring Scripture and replacing it with civil law. If the pope, as the heir of poverty, sat to judge worldly goods he renounced his inheritance. Worse than this, however, were the pope's pretensions to political sovereignty throughout the world.[2] Yet, Bernard seldom expressed himself in such matters without acknowledging his own personal sense of worldliness: his ideals were commonly tempered or offset by a sound sense of the 'debt' of this world, which often times contributed to his seeming ambivalence and self-contradiction. Thus, in the *De consideratione* the abbot reminded Eugene that while he, as successor of the apostles, by judging between brothers was 'usurping a lowly, contemptible office' unbecoming of him, judgement upon the pope had in some ways to be spared, 'for,' he owned, 'I speak not of the heroic, but the possible.' The times and its men 'who sue for earthly inheritance' and press the pope for judgement would not have allowed him to abjure this role outright.

And yet, he demurred, 'I am sure that those who would say this could not show where any of the apostles at any time sat to judge men, to survey boundaries, or to distribute lands.' Thus, while the Church perhaps demanded the pope's earthly judgement, the fact remained that the apostles themselves did not sit in judgement but stood to be judged—a thing that would surely happen again in the future, Bernard warned. The pope was given the power of ultimate judgement, 'to pass judgement in Heaven even on the angels;' yet he wished that Eugene would 'scorn to judge the paltry worldly possessions of men,' for truly his 'power is over sin and not property.' It was because of sin that he received the keys of Heaven, 'to exclude sinners not possessors.' 'Tell me,' he mockingly asked, 'which seems to you the greater honour and greater power, to forgive

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[1] *De consideratione*, Bk. 4. VI. 20-21 (133-35).

[2] E. Kennan, *Traditio* 23, 89-90; see, P. de Vooght, *Du* De consideratione, 114-22. It has been traditionally thought that 'Gratian' was certainly aware of the Roman Law, though scrupulous to omit for various motives secular law texts from series of canons which he had borrowed from earlier collections. 'Gratian's' understanding and grasp of the Roman Law however has recently been challenged. In fact, for those proponents of that ethos of 'new reform' said to have been embodied by Bernard and other White monks, only Gerhoh of Reichersberg articulated a complaint against Roman Law in the Church similar to Bernard's in the *De consideratione*; see, S. Chodorow, *Gratian*, 62-63, 263, who also maintained that 'Gratian' was not ignorant of Roman Law; see, for Gerhoh of Reichersberg, *Ex libro de novitatibus huius temporis*, 301-02. Still, 'Gratian I's' first recension of the *Decretum* had even allowed that in ecclesiastical courts, if the Church Law did not cover a particular case, a judge could have recourse to the 'laws of the emperors' and 'princes.' And granting that there was no conflict of law, secular law could fill lacunae in the Church Law and merit full obedience. Gratian, *Decretum*, D. 2 d. a. c. 1, D. 3 d. a. c. 1, d. p. c. 2, D. 10 d. a. c. 1, d. p. c. 6, c. 7 (all were in the first recension, according to A. Winroth, Decretum, 198); S. Chodorow, *Gratian*, 215, 263; see also, K.W. Nörr, *Jurisprudence*, 329, 332-34.

sins or to divide estates?' For these base worldly concerns had their own judges, 'the kings and princes of the world.' The pope, thus, was invading the jurisdiction of those secular princes, putting his 'sickle to someone else's harvest.' In essence, the pope was competent enough to involve himself in such affairs, but it was unworthy of him to do so, and certainly so 'to dwell on them as if they were important and worthy of this kind of papal attention,' since he should be 'occupied by more important matters.'[1]

In the end, however, Bernard's hopes were untenable. Long before his own time, the reclamation, retention, and more efficient administration of Church properties had been primary concerns of the eleventh-century reform papacy.[2] And by the end of the twelfth century ecclesiastical courts would acquire competence to treat practically all of the cases which now appear before civil tribunals.[3] Similarly, despite whatever reservations 'Gratian' may have had over Roman Law *per se*, for him ecclesiastical property had a sacrosanct character.[4] 'Gratian I's' first recension of the *Decretum* itself rejected the argument that clerics should go before civil judges *ex possessionibus*, being exempt from the jurisdiction of secular judges by dint of *privilegium fori*: *Quod clericus apud seculares iudices accusandus non sit.*[5] Against objections and Biblical prohibitions regarding clerical entanglements in secular affairs, 'Gratian' made a distinction between secular business and the business of secular men: clerics, in the administration of Church property, were necessarily engaged in secular business; consequently, bishops could

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[1] *De consideratione*, Bk. 1. VII. 7-8 (35-37); see also, E. Kennan, *Traditio* 23, 99-101, who conjectured that Bernard's warning to the pope *non dominari* did not proscribe his ownership of property even though he did not have jurisdiction over property. For Bernard, ecclesiastical proprietorship was a neutral concept: it was not part of the original Petrine commission; nor did he justify it through reference to the *Donation of Constantine*. Rather, it was an accident of history. Bernard tolerated ownership although wealth should not be sought after and should be used for the benefit of the Church.

[2] In arguing for the papacy's superior jurisdiction against that of the secular powers, Gregory VII had proclaimed in 1076: *Quod si sancta sedes apostolica divinitus sibi collata principali potestate spiritualia decernens diiudicat, cur non et saecularia?* Gregory VII, *Das Register*, Bk. 4. II. 295. And nine months later: *Si enim coelestia et spiritualia sedes beati Petri solvit et iudicat, quanto magis terrena et saecularia.* Gregory VII, *Das Register*, Bk. 4. XXIV. 338; see, W. Ullmann, *Growth*, 278. And as R.L. Benson pointed out, while the Church generally was always concerned about the maintenance of its property in all forms, in the twelfth and thirteenth centuries its new constitutional doctrines increasingly treated in a thoroughly consistent manner all ecclesiastical holdings, including *regalia*, as subject solely to Church Law. R.L. Benson, *Bishop-Elect*, 338, 378.

[3] R.L. Benson, *Bishop-Elect*, 16; see, P. Herde, *Formularies*, 340-44: the majority of chapters in a fourteenth-century formulary—the *Formularium audientiae*—of various recensions purportedly in use in the papal chancery concerned temporal and economic matters.

[4] On the Church's *temporalia* in general, e.g., see especially, beyond the works cited above and below, J. Gilchrist, *Economic Activity*; L. Little, *Religious Poverty*; J.W. Baldwin, *Masters*, esp. pts. 3-5; W.E. Lunt, *Revenues*; W.J. Doheny, *Church Property: Modes of Acquisition* (Catholic University of America Canon Law Studies 41: Washington D.C., 1927); D. Herlihy, *Church Property*, 81-105; also, C.R. Cheney, *Innocent III and England*, 99; R.W. Southern, *Western Society and the Church*, 35, 131. John XXII would ultimately favour the Thomistic interpretation of property and wealth in the 1320s—he 'denounced the doctrine of apostolic poverty as impossible, and he sanctified Thomas Aquinas.' J. Coleman, *Two Jurisdictions*, 76.

[5] Gratian, *Decretum*, C. 11 q. 1 d. a. c. 1.

judge concerning secular business if it was a cleric's business.[1] 'Gratian I' also rejected the argument that clerics were subject to their bishops *ex officio* and to the emperor *ex possessionibus*, although it had very strong traditional support.[2] Further, while *privilegium fori* affected the property rights of clerics, 'Gratian I' also demonstrated that the Church possessed some authority over its lay subjects' own property rights. The land and produce of parishioners could be claimed in the form of tithes and first fruits. And even if canon law recognised that land was held according to imperial statutes, these ecclesiastical taxes were not construed as a special grant of imperial or royal power such as was *privilegium fori*. 'Gratian I' put forth that the right to receive tithes devolved upon the pastor when he received the license to exercise a care of souls from the bishops. And in this way, the bishop's jurisdiction was temporal, and could be exercised both in terms of persons and cases.[3] For 'Gratian,' according to S. Chodorow, the Church was an independent community, an entity self-contained and complete, possessed of governors—bishops—who held an independent juridical authority.[4]

In any event, by the mid-twelfth century the Church continued to have good reason to be solicitous about its properties. Beyond the attacks and claims of fellow churchmen, illicitly alienated clerical—especially episcopal—property was enough of a concern to become the subject of at least thirty extant papal letters of the period 1143-53.[5] The problem was enough of a concern in fact that it earned its own *arenga*: 'The authority of the sacred canons has sanctioned that no bishop or abbot might alienate or transfer ecclesiastical property into the power of princes or other

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[1] Gratian, *Decretum*, C. 11 q. 1 d. p. c. 47; see, in general, Gratian, *Decretum*, C. 11 d. init., C. 11 q. 1, esp. dd. p. cc. 10, 11, 26, 30, 31, 34, all included in the first recension of 'Gratian I' (see also, D. 2 d. a. c. 1, D. 3 d. a. c. 1, d. p. c. 2, D. 10 d. a. c. 1, d. p. c. 6, c. 7, C. 25 q. 1 d. p. c. 16); see, A. Winroth, Decretum, 211-12.

[2] This reflected a change, according to S. Chodorow, in the view of the Church after the Investiture Contest. By breaking away from the secular powers, by removing them from participation in the governance and business of the Church, the constitutional law of the Church was affected: the practices of earlier centuries were discredited and replaced, and the Church became in the eyes of its writers a juridical community possessed of its own jurisdiction, constitution, and complement of juridical powers which could be exercised by its rulers. S. Chodorow, *Gratian*, 215-23.

[3] Gratian, *Decretum*, C. 11 q. 1 d. p. c. 26.

[4] S. Chodorow, *Gratian*, 215-23; see also, J. Sayers, *Judges Delegate*, 166: the jurisdiction of canon law claimed to extend over certain persons and certain cases. The Church claimed litigants *ratione personae* and *ratione materiae*. *Privilegium fori*—the right of a clerk to have a case tried only before a Church court—was well defined and largely accepted by the thirteenth century.

[5] *PL*, Celestine II, no. 20; *PL*, Lucius II, no. 39, 91; *PL*, Eugene III, no. 59, 87, 280, 394, 427, 465, 471; JL, 8696, 8697 (*laudatum* in *EPRI*, no. 207 [JL, 9632]), 9533; *IP* 6/1, *317/3; *IP* 6/2, *192/6, 161/1; PUE3, no. 49, 70; PUE2, no. 50 (JL, 8863), 63; PUF2, no. 19, 22, 24; PUS2, no. 66; Theiner 1, 14, no. 16 (*LC*, 402-03, no. 123; *Antiquitates* 4, 37-38; *IP* 2, 204/2); *EPRI*, no. 190 (JL, 8612), 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959), 200 (JL, 9079), 207 (JL, 9632); PU in Mailand, no. 9 (*IP* 7/1, 339/38; P-H *Iter*, 239; JL, 8749; the same, nearly, as *Antiquitates* 5, 259-60, *PL*, Innocent II, no. 158, col. 208-09, both from Innocent II); PU in Pisa, no. 4 (*IP* 5, 62/213). See, on alienation, J.F. Cleary, *Canonical Limitations on the Alienation of Church Property* (Catholic University of America Canon Law Studies 100: Washington D.C., 1936); J. Coleman, *Two Jurisdictions*, 77; W.E. Lunt, *Revenues*, 31; J. Gilchrist, *Economic Activity*, 99-100; D. Herlihy, *Agrarian Revolution*, 32-33; D. Herlihy, *Church Property*, 83; P. Herde, *Formularies*, 342-43.

persons, and if it should done, it should be held void.'[1] More acute however was the problem of the despoliation of clerics and their goods at the hands of laymen, the subject of more than one-fifth of all extant papal letters.[2] Indeed, the great wealth of the Church continually placed its clerical holders in the way of ambitious and rapacious lay powers, including those princes of the world to whom Bernard of Clairvaux would have given the exclusive power of judging over all worldly things. But for those despoiled clerics, the pre-eminent papal authority must have appeared as the authority, ecclesiastical or not, most eminently equipped to impose the justice of proprietary rights against those princes. Indeed, the right of bishops and especially the bishop of Rome to judge and administer concerning possessions and all forms of *temporalia* notwithstanding, it was the needs and business of churchmen, between threats to their property and rights by laymen and fellow clerics, that largely determined the character of papal business and 'policy.' In the period 1143-53 clerics, monks, and churches were dependent for their sustenance and expenses upon their own altars, benefices, and patrimonies, that is, their own private and semi-private revenues and properties. And prelates continued to prioritise the role of their offices—as they had from the beginning of the reform period, and as 'old' Benedictines had traditionally—with regard to their properties and temporalities. Thus, for instance, between 1144 and 1153 at least twenty-one different papal letters were issued on behalf of the bishop of Bayeux for the purpose of the recovery of the possessions, properties, and judicial rights of his office.[3] The bishop also received at least three additional papal privileges of protection.[4] This seeming conflict of interests between the spiritual and temporal created what has been observed as a 'duality' of clerical office and a 'paradox' of ecclesiastical wealth.

Indeed, in the mid-twelfth century duality was inherent in the episcopal office, but especially with regard to the problems associated with *regalia*, which, along with other non-regalian involvements of prelates, secular and religious, placed them in two judicial and administrative hierarchies and implicated them in various military, policing, and civic functions, including implication in blood judgement and commercial affairs. In certain kingdoms and principalities the ecclesiastical martial hosts responsible to the prince were predominant. And as occurred with regard to the monetary and commercial culture of the clergy, from 'Gratian' onwards the canonists and theologians for the most part rationalised or justified the involvement of the clergy, especially the episcopate, in such affairs.[5] And because of these things, Bernard of

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[1] Appendix 1, no. 186 (PUE2, no. 63).
[2] See, Appendix 3, for citations.
[3] *EPRI*, no. 190 (JL, 8612); PUF2, no. 19, 22, 24, 31, 32, 33, 34, 36, 37, 41, 42, 46, 50, 57, 58, 67, 68, 69, 70, 71.
[4] PUF2, no. 23, 30, 64.
[5] On this in general, see, R.L. Benson, *Bishop-Elect*, 203-372; R.L. Benson, 'The Obligations of Bishops with "*regalia*:" Canonistic Views from Gratian to the Early Thirteenth Century,' *Proceedings of the Second International Congress of Medieval Canon Law*, ed. S. Kuttner and J.J. Ryan (Vatican City, 1965); C.B.

Clairvaux lamented in *Book Three* (ca. 1152) of the *De consideratione*: 'Why do clerics wish to be one thing and appear another? Indeed, this is hardly virtuous and hardly honest. Actually, by their dress they show themselves to be knights; by their profession, clerics; by their behaviour, neither. For they neither fight as knights nor preach as clerics. To what order do they belong? When they desire to belong to both they abandon both and confound both.'[1] Likewise, the theme of militant German ecclesiastics became a particularly favourite one for twelfth-century moralists.[2]

Bouchard, *Auxerre*; C.P. Schriber, *Arnulf*; E.H. Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton, 1957), esp. 43-44; T. Reuter, '*Episcopi cum sua militia*: The Prelate as Warrior in the Early Staufer Era,' *Warriors and Churchmen in the High Middle Ages: Essays Presented to Karl Leyser*, ed. T. Reuter (London, 1992), 79-93; T. Reuter, 'The Imperial Church System of the Ottonian and Salian rulers: A Reconsideration,' *Journal of Ecclesiastical History* 33 (1982), 347-74; B. Arnold, 'German Bishops and their Military Retinues in the Medieval Empire,' *German History* 7 (1989), 161-83; B. Arnold, *German Knighthood, 1050-1300* (Oxford, 1985), esp. 6-9; A. Grabois, '*Militia* and *Malitia*: The Bernardine Vision of Chivalry,' *The Second Crusade and the Cistercians*, ed. M. Gevers (New York, 1992), 49-56; J.W. Baldwin, *Masters*, esp. 175-227; J.W. Baldwin, *The Government of Philip Augustus* (Berkeley, 1986), 281-89, 450-53; C.H. Coulson, 'Fortress-Policy in Capetian Tradition and Angevin Practice: Aspects of the Conquest of Normandy by Philip II,' *Anglo-Norman Studies* 6: *Proceedings of the Battle Conference, 1983*, ed. R.A. Brown (Woodbridge, 1984), 13-38; S.E. Gleason, *An Ecclesiastical Barony of the Middle Ages: The Bishopric of Bayeaux, 1066-1204* (Cambridge, Mass., 1936); E.M. Hallam, 'Monasteries as "War Memorials:" Battle Abbey and La Victoire,' *Studies in Church History* 20 (1983), 47-57; D. Knowles, *Monastic Order*, 712; W. Ullmann, *Growth*, 331-43, 408-12; L. Little, *Religious Poverty*, 31, 64, 226 n. 60; W.E. Lunt, *Revenues*, 63-64; C.S. Holdsworth, *Ideas*, 59-78; R.W. Southern, *Saint Anselm and his Biographer* (Cambridge, 1963), 155-60; J.C. Holt, 'The Introduction of Knight Service in England,' *Anglo-Norman Studies* 6: *Proceedings of the Battle Conference, 1983*, ed. R.A. Brown (Woodbridge, 1984), 89-106; H.M. Chew, *The English Ecclesiastical Tenants-in-Chief and Knight Service* (Oxford, 1932), 1-74; J.O. Prestwick, *War and Finance in the Anglo-Norman State* (Transactions of the Royal Historical Society 5/4: London, 1954); S. Chodorow, *Gratian*, 54-64, 223-46; G.A. Loud, 'The Church, Warfare and Military Obligation in Norman Italy,' *Studies in Church History* 20 (1983), 31-45; J.L. Nelson, 'The Church's Military Service in the Ninth Century: A Contemporary Comparative View?,' *Studies in Church History* 20 (1983), 15-30; I.S. Robinson, *Gregory VII and the Soldiers of Christ*, esp. 179; I.S. Robinson, *Institutions*, 444-45; T.K. Keefe, *Feudal Assessments and the Political Community under Henry II and his Sons* (Berkeley, 1983), esp. 20-36, 41-57, 60, 87, 97-99, 102, 110-11, 123, 143, 157-60; I.J. Sander, *Feudal Military Service in England* (Oxford, 1956), 3, 16-19, 108-14; W.F. Corbett, 'The Development of the Duchy of Normandy and the Norman Conquest of England,' *The Cambridge Medieval History* 5, ed. C.W. Previte-Orton and Z.N. Brooke (Cambridge, 1926), 481-520, here at, 507-10; R.V. Turner, 'Clerical Judges in English Secular Courts: The Ideal Versus the Reality,' *Medievalia et humanistica* n.s. 3 (1972), 75-98; O. Engels, 'Der Reichsbischof (10. und 11. Jahrhundert),' *Der Bischof in seiner Zeit*, ed. P. Berglar and O. Engels (Cologne, 1986), 41-94; O. Engels, 'Der Reichsbischof in ottonischer und frühsalischer Zeit,' *Beiträge zu Geschichte und Struktur der mittelalterlichen* Germania sacra, ed. I. Crusius (Göttingen, 1989), 135-75; E.M. Jamison, 'Additional Work by E. Jamison on the *Catalogus baronum*,' *Bollettino dell'Istituto storico italiano per il medio evo ed archivio muratoriano* 83 (1971), 1-63; B.H. Rosenwein, *Cluniac Liturgy as Ritual Aggression*, 129-57. On this, see also above, ch. 2.4-2.6.

[1] *De consideratione*, Bk. 3. V. 20 (106). For instance, half a century earlier, the simoniac Archbishop Manasses of Reims, a great lover of knights, was purported to have said: 'The archbishopric of Reims would be good, if it were not necessary to sing masses on account of it.' Guibert of Nogent, *De vita sua sive monodiarum libri tres*, *PL* 156, Bk. 1. XI, col. 853; see also, L. Little, *Religious Poverty*, 31 and 226 n. 60; C. Morris, '*Equestris ordo*: Chivalry as a Vocation in the Twelfth Century,' *Studies in Church History* 15 (1978), 90.

[2] In the 1220s Caesarius of Heisterbach would write of a Parisian student who declared that he could believe anything but that a German bishop could achieve salvation as, more so than all other nations' bishops, they wielded both spiritual and material swords, exercised blood-justice, waged wars, and must needs have given more thought to their troops' wages than their flocks' souls. Caesarius himself contrasted these with earlier archbishops of Cologne who had pulled down castles and erected monasteries: by the mid-twelfth century they did the opposite. Caesarius of Heisterbach, *The Dialogue on Miracles*, trans. H. von E. Scott and C.C.

But this type of duality affected the religious, as well. And it was thus ironic when Abbot Wibald of Stavelot, perhaps the single greatest beneficiary of papal patronage and justice in the papal letters of this period,[1] criticised the deposed abbot of Corvey, Henry of Northeim, and his sister, the former abbess of Kemnade, for inordinately involving themselves in military matters—in the case of the former abbess, she had alienated the lands of her abbey 'for the benefit of her knights and lovers.'[2] In a dispute with the bishop of Minden over the transfer of Kemnade to Corvey, Wibald wrote to the bishop: 'But because our peace has not agreed with you, we could have appealed by our rights on account of our many hardships, fearing nothing, insofar as that would happen to us which has happened to your abbot [of St. Mauritius *de Insula prope Mindam*] in his own appeal. For your laymen are wont to judge of appeals, which are made to the lord pope, with drawn swords.'[3] The bishop denied the accusation, but added that the abbot himself was indeed surrounded by enough armed retainers to appeal without fear. Further, he added, a prelate's

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Swinton Bland (New York, 1929), Bk. 2. XXVII. 110-11, also, Bk. 2. XXVIII-XXIX. 111-13. The archbishops of Mainz appear to have been particularly vulnerable to such criticisms after the mid-twelfth century; see, T. Reuter, *Prelate as Warrior*, 79-81, 92; also, J.W. Baldwin, *Masters*, 186. The paragon of this paradigm was Archbishop Christian of Mainz (1165-83); see, e.g., Romuald of Salerno, *Chronicon*, 250-51, 255, 262, 267, 275-77, 284, 294-97; Roger of Hoveden, *Annals of Roger of Hoveden* 1, 459-60, 518-19; Roger of Hoveden, *Annals of Roger of Hoveden* 2, 29-30; *Liber de obsidione Ancone*, *RIS*^{2} 6/3, 3-55; *Annales Ceccanenses*, 285-87; *Annales Casinenses*, 311-13; *Mainzer Urkundenbuch* 2/2: *Die Urkunden seit dem Tode Erzbischof Adalberts I. (1137) bis zum Tode Erzbischof Konrads (1200): 1176-1200*, ed. P. Acht (Darmstadt, 1971), 740-41, no. 457; *The Letters of John of Salisbury* 2, 50-57, no. 152; Caesarius of Heisterbach, *Dialogue*, Bk. 2. XXVII-XXIX. 110-13; *Life of Alexander III*, 67-68, 70-71, 76, 78, 83-84, 88, 98-99, 113-14, 117; *Annales Pisani*, 32-34, 42, 54-55, 59, 70; *Chronica regia Coloniensis*, 117, 121; Otto of Freising, *Gesta*, 336-37; *Constitutiones*, 332-34, no. 238, 366, no. 262. For other similar references to clerical militancy from the primary sources, see, *The* Summa contra haereticos *Ascribed to Prepositinus of Cremona*, ed. J.N. Garvin and J.A. Corbett (Publications in Medieval Studies 15: Notre Dame, Ind., 1958), 238-39; *Chronicon Venetum quod vulgo dicunt Altinate: Historia ducum Veneticorum*, *MGH SS* 14, 85-89; *La chronique de Gislebert de Mons*, ed. L. Vanderkindere (Commission royale d'histoire: Recueil de textes pour servir à l'etude de l'histoire de Belgique: Brussels, 1904), 157-58; *'Indiculus Loricatorum,'* *Constitutiones*, 633-34, no. 436; Gerhoh of Reichersberg, *Liber de aedificio Dei*, *PL* 194, col. 1217-1220; *Gesta Marcuardi abbatis Fuldensis (1150-1165)*, *Fontes rerum Germanicarum* 3, ed. J.F. Böhmer (Stuttgart, 1843-), 172-73; *Gesta Alberonis archiepiscopi: Gesta auctore Balderico, Gesta Treverorum*, *MGH SS* 8, 250-51; and, on the amount of military levies owed by bishops in England and Normandy, see, e.g., *Scripta de feodis ad regem spectantibus et de militibus ad exercitum vocandis e Philippi Augusti regestis excerpta*, *Recueil des historiens des Gaules et de la France* 23, J.N. de Wailly (Paris, 1894), 636-37, 693-94; *The Red Book of the Exchequer* 2, ed. H. Hall (*Rerum Britannicarum medii aevi scriptores* 99: London, 1896), 186-445, 624-45; for Norman Italy, see, *Catalogus baronum*, ed. E.M. Jamison (Fonti per la storia d'Italia pubblicata dall'Istituto storico italiano per il Medo Evo 101: Rome, 1972).

[1] See, *PL*, Celestine II, no. 20; *PL*, Lucius II, no. 67; *PL*, Eugene III, no. 21, 120, 245, 246, 247, 254, 255, 271, 272, 280, 281, 284, 285, 335, 359, 367, 391, 392, 393, 394, 395, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 524, 568; Die älteren Urkunden für Helmarshausen und das Helmarshäuser Kopialbuch, 113-14, no. 9 (*PL*, Eugene III, no. 268; JL, 9209); Wibald, no. 17 (JL, 8461), 47, 354 (JL, 9521); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03/144-45); see also, *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 1, col. 1613-15, no. 3, col. 1616-17, no. 5, col. 1618-19, no. 6, col. 1619, no. 7, col. 1619-21, no. 8, col. 1621-22; Otto of Freising, *Gesta*, 78-79, 95.

[2] See, Wibald, no. 69, 75; also, Wibald, no. 37, 69, 75, 150; *PL*, Eugene III, no. 280, 281, 468, 474, 475, 476, 477; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 7, col. 1619-21, no. 8, col. 1621-22.

[3] Wibald, no. 260.

vassals deserved respect and consultation[1]—Wibald himself had acknowledged as much on other occasions.[2] Likewise, Bernard of Clairvaux himself, in a letter to Eugene III, actually commended the French royal counsellor Abbot Suger of St. Denis in early 1147 because: 'Before Caesar he is just as one of the Roman court, and before God he is just as one of the court of Heaven.'[3] Here, it was not the mingling between the spiritual and temporal realms that was an issue, but the ability to serve both duly and appropriately—something Bernard five years later would deny was possible.

The pope himself was eminently affected by this type of duality directly as a politician and territorial prince of the Patrimony. Furthermore, while 'Gratian I's' original recension of the *Decretum* had already in fact countenanced the priestly use of coercive force as well as blood judgements and military service of regalian prelates,[4] the military service of regalian bishops was stipulated on one condition: *Quod tamen hoc ispum non sine consensu Romani pontificis fieri debet.*[5] Similarly, in January 1152, upon the news of King Conrad III of Germany's intention to undertake a coronation expedition into Italy, the pope himself wrote to 'all of the archbishops, bishops, counts, and barons constituted throughout Germany,' reminding them that the king would only be able to carry through with such an undertaking with 'your forces in the company of a powerful expedition.'[6] For, 'because he and his own troops alone would scarcely be sufficient for such an arduous undertaking, you ought zealously to provide, according to your strength, your services (*servitus*) for him, as your prince.' Eugene therefore ordered them all in the Lord 'to arm yourselves manfully for the service of the kingdom and our aforementioned son, and prepare yourself for the expedition with him thus, so that both he himself, just as it becomes so great a prince, might avail to carry out authoritatively the journey thus arranged and assume the plenitude of his honour with joy and exaltation, and also so that we, supported by the merits of SS. Peter with Paul, might be able to receive his arrival, which we anticipate to the advantage of the Church and kingdom and the weal of the Christian populace, with the desired fruit.'[7] But military interests also affected the pope in his judicial office. Thus, numerous papal letters of the period 1143-53 supported clerics in possession of 'fiefs (*feudum*);'[8] while, additionally, more than twice as many

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[1] Wibald, no. 262.
[2] See, Wibald, no. 150, 152, 295; also, T. Reuter, *Prelate as Warrior*, 90-91.
[3] Bernard of Clairvaux, *Letters*, no. 309 (B.S. James, no. 337).
[4] See, Gratian, *Decretum*, C. 23, esp. q. 8; S. Chodorow, *Gratian*, 223-46; A. Winroth, Decretum, 218-220.
[5] Gratian, *Decretum*, C. 23 q. 8 d. p. c. 25; see also, R.L. Benson, *Bishop-Elect*, 317-25; R.L. Benson, *Regalia.*
[6] *...hoc tempore ad urbem regiam, vestro fretus auxilio cum expeditione valida venire, largiente Domino, disposuerit.*
[7] *PL*, Eugene III, no. 484.
[8] Under Celestine II and Lucius II: *PL*, Lucius II, no. 26, 53; *EPRI*, no. 190 (JL, 8612); Theiner 1, 14, no. 16 (*LC*, 402-03, no. 123; *Antiquitates* 4, 37-38; *IP* 2, 204/2); PUF8, no. 19 (JL, 8487). Under Eugene III through 1146: *PL*, Eugene III, no. 48 (Otto of Freising, *Gesta*, 71-73; JL, 8796), 89 (JL, 8876; see, *PL*, Eugene III, no. 48 [Otto of Freising, *Gesta*, 71-73; JL, 8796]); JL, 8920; *IP* 6/1, *254/10; *APRI* 3, no. 73 (JL, 8898); *EPRI*, no. 197 (JL, 8955); PUE2, no. 50 (JL, 8863); PUF2, no. 31, 32; PUN, no. 51; PUKHL, no. 63 (PU in Malta, no. 3). Under Eugene III 1147-8 July 1148: *PL*, Eugene III, no. 259; PUF6, no. 61; PUF2,

letters supported clerics in possession of *castra*[1] and other military fortifications.[2]

Beyond such 'regalian' and military obligations, the clergy also were implicated and supported by the curia in the new 'money' or 'commercial' economies of the twelfth century, in contradistinction to the ethos of the new *vita apostolica* of the twelfth century which reacted largely against what was perceived as widespread clerical worldliness, leading not only to the formation of the new eremitic, ascetic movements and orders, but ultimately, according to conventional thought, to a Church-wide ideological factional divide between the old guard 'Gregorians' and new spiritual reformers led by Bernard of Clairvaux and culminating in the schism of 1130.[3] In fact, whether or not the influence of a party of 'new reformers' associated with the candidacy of Innocent II would, after 1130, prevail in the government of the papacy—a view which the evidence for Innocent's successors by no means supports—money appeared everywhere in the chancery letters of 1143-53, with scarcely a note of papal disapprobation: at least nearly twelve percent of all letters made direct stipulations for money or cash with regard to various ecclesiastics[4]—while at least thirty-five percent of these letters also concerned clerical

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Nach. Gott., no. 15. Under Eugene III after 8 July 1148, including undated letters: JL, 9505a; *LC*, 380-82, no. 91(*Antiquitates* 3, 793-96; *IP* 3, 241/14); *IP* 6/2, 161/1; *APRI* 3, no. 114 (JL, 9732); PUF2, no. 65, 69; PUF7, no. 70 (PUTJ1, no. 14; JL, 9438); PU in Turin, no. 13 (*IP* 6/2, 174/14); Nachträge zu den PU in Italiens 9, no. 7 (*IP* 7/1, 239/25; P-H *Iter*, 246; JL, 9668).

[1] *PL*, Celestine II, no. 18; *PL*, Eugene III, no. 34, 38, 39, 59, 123, 125, 169, 292, 307, 527, 583 (*IP* 3, 251/1; JL, 9726/9727); JL, 8821 (see, *APRI* 1, no. 201 [JL, 8829]), 9383 (see, PUTJ1, no. 8), 9509, 9569a; *IP* 1, *107/9, *192/3; *IP* 2, *223/7, 171/1; *IP* 4, *150/9; *IP* 6/2, 174/13; *IP* 7/2, *108/4; *IP* 8, *44/167; *APRI* 1, no. 201 (JL, 8829), 227 (JL, 9672); *APRI* 2, no. 401 (JL, 9574); *APRI* 3, no. 70 (JL, 8826), 114 (JL, 9732); *EPRI*, no. 212 (JL, 9722); PUE3, no. 86; PUF6, no. 56, 61, 62; PUF1, no. 41 (JL, 8756), 44; PUTJ1, no. 8 (JL, 8478), 9 (see, PUTJ1, no. 8), 11 (see, PUTJ1, no. 8), 13; PU in Malta, no. 2 (see, PUTJ1, no. 8); PU in Sizilien, no. 3 (see, PUTJ1, no. 8); Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465); *LC*, 380-82, no. 91(*Antiquitates* 3, 793-96; *IP* 3, 241/14), *LC*, 382-83, no. 92 (Theiner 1, 14-15, no. 18; *Antiquitates* 3, 777-78; *IP* 1, 187/5), *LC*, 383-84, no. 94 (Theiner 1, 14, no. 17; *IP* 2, 207/3), *LC*, 384, no. 95 (*Antiquitates* 2, 559-60; *IP* 2, 207/1), *LC*, 403-04, no. 124 (*Antiquitates* 4, 241-42; *IP* 3, 482/1); PUF4, Nach. Gott., no. 22; PUF5, Nach. Gott., no. 22 (JL, 8884); PU in Turin, no. 13 (*IP* 6/2, 174/14); Varietà, 400-03, no. 1 (*IP* 1, 173/3; JL, 9604); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 369-70, no. 941 (JL, 9393); *Chronicon monasterii de Abingdon* 2, 200 (JL, 9100); Nachträge zu den PU in Italiens 9, no. 7 (*IP* 7/1, 239/25; P-H *Iter*, 246; JL, 9668).

[2] *PL*, Eugene III, no. 169; *IP* 6/1, 77/12 (JL, 8438); Wibald, no. 347 (*Constitutiones*, 188-89, no. 134; *IP* 1, 180/9); PUE3, no. 86; PUE2, no. 40 (JL, 8686); PUN, no. 46; *EPRI*, no. 209 (JL, 9670), 212 (JL, 9722).

[3] This is discussed in detail in ch. 2.3.

[4] See, *PL*, Celestine II, no. 18; *PL*, Lucius II, no. 23, 26, 33, 40, 43, 48; *PL*, Eugene III, no. 6, 25, 34, 48 (Otto of Freising, *Gesta*, 71-73; JL, 8796), 89 (JL, 8876; see, *PL*, Eugene III, no. 48 [Otto of Freising, *Gesta*, 71-73; JL, 8796]), 92, 152, 166, 186, 222, 228, 270, 292, 334, 336, 372, 373, 379, 383, 3398, 400, 401, 430, 434, 470, 485, 486, 491, 494, 511, 513, 517, 533, 546 (*Decretales*, Gregory IX, Bk. 2. XX. 5; JL, 9657), 550, 566, 577, 583 (*IP* 3, 251/1; JL, 9726/9727); JL, 9291a, 9383 (see, PUTJ1, no. 8); *IP* 1, *55/7, *100/4, *107/9, *192/3; *IP* 4, *112/1; *IP* 5, *320/6; *IP* 6/2, 119/6; *IP* 7/1, *323/1; *IP* 7/2, *108/3; *IP* 9, 77/1, *250/6, *256/5; *APRI* 1, no. 201 (JL, 8829), 211 (JL, 9074), 213 (JL, 9119); *APRI* 2, no. 390 (JL, 8816), 391 (JL, 8784), 401 (JL, 9574), 402 (JL, 9575); *APRI* 3, no. 55 (JL, 8516), 61 (JL, 8664), 70 (JL, 8826), 91 (JL, 9292), 114 (JL, 9732); *EPRI*, no. 190 (JL, 8612), 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959); PUE3, no. 47, 48, 69, 71; PUE2, no. 34, 65 (JL, 9428), 75; PUF2, no. 68, 69, 70; PUF3, no. 32, 33; PUF1, no. 51 (JL, 9171), 52, 55; PUF6, no. 56, 61; PUF5, no. 71, 72; PUF8, no. 19 (JL, 8487), 22 (JL, 8624); PUF3, Nach. Gott., no. 6; PUF4, Nach. Gott., no. 22; PUF5, Nach. Gott., no. 22 (JL, 8884); PUS2, no. 68; PUN, no. 50; PUTJ1, no. 8 (JL, 8478), 9 (see, PUTJ1, no. 8), 11 (see, PUTJ1, no. 8), 13; PU in Malta, no. 2 (see, PUTJ1, no. 8); PU in Sizilien, no. 3 (see, PUTJ1, no. 8); PUKHL, no. 63 (PU in Malta,

controversies.[1] The one substantive exception to this was a letter sent ca. 1148-53 to the bishop of Padua: 'Concerning that about which your fraternity has asked us, namely, whether they commit the crime of usury who accrue profit from possessions which have been mortgaged to them with a pledge and afterwards still recoup the capital, I have briefly related to you that they are all bound to charges of usury who receive more than was the capital. For, whatever accrues to capital is usury.'[2] The principal crusading bulls of Eugene also promised forgiveness of usurious debts.[3]

Yet, the pope was personally involved in several money-loans in this period—often termed 'pledges,' or 'mortgages,' or *pignora*[4]—or in leases with pensions.[5] In fact, in the second half of the twelfth century and especially into the thirteenth the widespread clerical involvement in the commercial economy—in money matters and business practices—were increasingly rationalised and justified by canonists and theologians, especially by the indigent mendicant scholars: the ancient proscriptions were extenuated or overturned, with certain reservations.[6] Similarly, already

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no. 3); PUP, no. 49; *Historia monasterii S. Augustini Cantuariensis*, 390-91, no. 22 (*PL*, Lucius II, no. 80; JL, 8581), 391-92, no. 23 (*PL*, Lucius II, no. 82; JL, 8580), 403-04, no. 31 (JL, 8990), 404, no. 32 (JL, 8904); Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465), Theiner 1, 14, no. 16 (*LC*, 402-03, no. 123; *Antiquitates* 4, 37-38; *IP* 2, 204/2); *LC*, 384-85, no. 96 (*Antiquitates* 2, 559-60; *IP* 2, 207/2), *LC*, 380-82, no. 91(*Antiquitates* 3, 793-96; *IP* 3, 241/14), *LC*, 382-83, no. 92 (Theiner 1, 14-15, no. 18; *Antiquitates* 3, 777-78; *IP* 1, 187/5), *LC*, 383, no. 93 (*Antiquitates* 3, 779; *IP* 1, 192/2), *LC*, 384, no. 95 (*Antiquitates* 2, 559-60; *IP* 2, 207/1), *LC*, 403-04, no. 124 (*Antiquitates* 4, 241-42; *IP* 3, 482/1), *LC*, 88-89 (*Antiquitates* 5, 864; *IP* 4, *163/21); Wibald, no. 214 (Otto of Freising, *Gesta*, 61-63; *IP* 8, *45/172), 347 (*Constitutiones*, 188-89, no. 134; *IP* 1, 180/9); PU in Campanien, no. 10 (*IP* 2, 147/4); PU in Mailand, no. 9 (*IP* 7/1, 339/38; P-H *Iter*, 239; JL, 8749; the same, nearly, as *Antiquitates* 5, 259-60, *PL*, Innocent II, no. 158, col. 208-09, both from Innocent II); PU in Pisa, no. 4 (*IP* 5, 62/213); Cartulaire de l'église Notre-Dame de Paris 1, 27, no. 6 (JL, 9073) (see, 28-29, no. 8). See also, for references to fairs and markets, *PL*, Eugene III, no. 149, 275, 528, 529; *IP* 9, *41/102; Mansi 21, 713-18 (JL 2, 52-53), Council of Reims, cc. 11, 12; PUE3, no. 69, 70; PUF2, no. 67.

[1] See, *PL*, Lucius II, no. 23, 40, 43; *PL*, Eugene III, no. 6, 25, 152, 186, 292, 334, 336, 372, 373, 383, 398, 400, 401, 485, 486, 517, 533, 566; *IP* 7/1, *323/1; *IP* 7/2, *108/3; *IP* 9, *250/6, *256/5; *APRI* 2, no. 390 (JL, 8816); *APRI* 3, no. 55 (JL, 8516); PUE3, no. 47, 48; PUE2, no. 34, 65 (JL, 9428); PUF2, no. 70; PUF3, no. 32, 33; PUF1, no. 52, 55; PUF8, no. 22 (JL, 8624); PUN, no. 50; PUS2, no. 68; *Historia monasterii S. Augustini Cantuariensis*, 390-91, no. 22 (*PL*, Lucius II, no. 80; JL, 8581), 403-04, no. 31 (JL, 8990), 404, no. 32 (JL, 8904); PU in Pisa, no. 4 (*IP* 5, 62/213); Cartulaire de l'église Notre-Dame de Paris 1, 27, no. 6 (JL, 9073) (see, 28-29, no. 8).

[2] *PL*, Eugene III, no. 550 (JL, 9667, for the date).

[3] See, *PL*, Eugene III, no. 48 (Otto of Freising, *Gesta*, 71-73; JL, 8796), 89 (JL, 8876; see, *PL*, Eugene III, no. 48 [Otto of Freising, *Gesta*, 71-73; JL, 8796]); PUKHL, no. 63 (PU in Malta, no. 3).

[4] See, *IP* 1, *192/3; PUF2, no. 70; *LC*, 384, no. 95 (*Antiquitates* 2, 559-60; *IP* 2, 207/1); *LC*, 384-85, no. 96 (*Antiquitates* 2, 559-60; *IP* 2, 207/2); *LC*, 383, no. 93 (*Antiquitates* 3, 779; *IP* 1, 192/2).

[5] See, *PL*, Eugene III, no. 583 (*IP* 3, 251/1; JL, 9726/9727); *APRI* 3, no. 114 (JL, 9732); *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14); Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465); see also, *ARPI* 3, no. 55 (JL, 8516), concerning a controversy over such a lease.

[6] On this, in general, see, J. Gilchrist, *Economic Activity*; L. Little, *Religious Poverty*; J.W. Baldwin, *Masters*, esp. pts. 3-5; J.W. Baldwin, *The Medieval Theories of the Just Price: Romanists, Canonists and Theologians in the Twelfth and Thirteenth Centuries* (Transactions of American Philosophical Society, n.s. 49/4: Philadelphia, 1959), 12-16, 39-47; G. Constable, *Spiritualia*, esp. 306-07; J.T. Noonan, *The Scholastic Analysis of Usury* (Cambridge, Mass., 1957), esp. 52-53, 56-57, 110, 144-45; J.T. Noonan, *Bribes*, 209-10, 215, 219; J. Van Engen, *Crisis of Cenobitism*, esp. 279-99; G. Duby, *Knightly Class*, 249, 252-53; W.E. Lunt, *Revenues*, esp. 10, 51, 71-72; R.W. Southern, *Western Society and the Church*, 36; D. Herlihy, 'Treasure Hoards in the Italian Economy, 960-1139,' *Economic History Review* 2/10 (1957-58), 1-14; D. Herlihy, *Agrarian Revolution*, 36; R.S. Lopez, 'An Aristocracy of Money in the Early Middle Ages,'

in March 1151 Eugene III wrote to the archbishop of Rouen informing him that the bishop of Beauvais had reported to the curia that a parishioner of the archbishop had reneged on a loan which he had received from a lay moneylender of Beauvais with an oath to repay. Accordingly, the pope ordered him to inquire into the matter and, if the complaint held true, to compel his parishioner to repay the sum or punish him with ecclesiastical severity should he fail to comply, 'so that the complaint should not thereafter be conveyed back to our ears on account of a defect of justice.'[1] Nearly a year later Eugene delegated to the abbot of Reigny a similar controversy between the abbots of Vézélay and Chora.[2] The pope wrote to the abbot of Chora that among the abbot of Vézélay's various grievances concerning him, he complained that Chora was 'refusing against reason to restore to them, his burghers, G. and V., from Vézélay, money which they are said to have loaned to you.' As a result, the pope ordered him, 'because we exist as debtors to all in their own justice,...to provide justice for our son, the abbot of Vézélay, over this in the presence of...the abbot of Reigny.'[3]

Mills were a particularly important aspect of the new economy; and these in particular were regularly confirmed in papal privileges of protection for religious houses.[4] Similarly, they were also a source of dispute between clerics.[5] Thus, in February 1148 the pope wrote to the

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Speculum 28 (1953), 1-43, here at, 41; T.P. McLaughlin, 'The Teaching of the Canonists on Usury ' 1, *Medieval Studies* 1 (1939), 81-147; T.P. McLaughlin, 'The Teaching of the Canonists on Usury ' 2, *Medieval Studies* 2 (1940), 1-22; J. Sydow, *Cluny und die Anfänge der apostolischen Kammer*, 45-55; G. Duby, *The Early Growth of the European Economy: Warriors and Peasants from the Seventh to the Twelfth Century*, trans. H.B. Clarke (London, 1974), 91, 215; R.G. Witt, 'The Landlord and the Economic Revival of the Middle Ages in Northern Europe, 1000-1250,' *American Historical Review* 76 (1971), 965-88; D. Webb, 'A Saint and his Money: Perceptions of Urban Wealth in the Lives of Italian Saints,' *Studies in Church History* 24 (1987), 61-73, here at, 61; M. Weber, *Relgious Rejections of the World and their Directions, From Max Weber: Essays in Sociology*, trans. H.H. Gerth and C.W. Mills (New York, 1958), 323-59, here at, 331; S. Chodorow, *Gratian*, 65-67, 132, 164-65; K. Pennington, *Papal Monarchy*, 4; M. Bloch, *Feudal Society*, trans. L.A. Manyon (Chicago, 1964); J. Coleman, *Two Jurisdictions* 75-110; P. Herde, *Formularies*, 340ff; *HP*, 85. There was only one mention of 'jews' or various forms of the word in the papal letters of 1143-53, in *LC*, 88-89 (*Antquitates* 5, 864; *IP* 4, *163/21), an undated extract from the *Liber Censuum*—thus, not an extant letter proper or redaction—which quoted a papal privilege of protection of Lucius II (*PL*, Lucius II, no. 46) for the bishop of Rimini. On the papacy and *vita apostolica*, see also, e.g., H. Leyser, *Hermits and the New Monasticism*; G. Constable, 'The Study of Monastic History Today,' *Religious Life and Thought (Eleventh-Twelfth Centuries)* (London, 1979), 21-51; B.M. Bolton, '*Via ascetica*: A Papal Quandary,' *Studies in Church History* 22 (1985), 161-91; C.N.L. Brooke, 'Monk and Canon: Some Patterns in the Religious Life of the Twelfth Century,' *Studies in Church History* 22 (1985), 109-29.

[1] *PL*, Eugene III, no. 434.

[2] *PL*, Eugene III, no. 485.

[3] *PL*, Eugene III, no. 486.

[4] See, e.g., for those privileges in the *PL* alone, *PL*, Celestine II, no. 12, 13, 21, 38, 48; *PL*, Lucius II, no. 1, 5, 35, 45, 73, 93; *PL*, Eugene III, no. 4, 5, 23, 50, 53, 54, 68, 73, 74, 95, 99b., 110, 112, 132, 139, 143, 172, 173, 176-77, 178, 179, 180, 181, 188, 189, 190, 193, 193b., 197, 207, 210, 213, 219, 223, 226, 234, 235, 238, 240, 242, 258, 260, 265, 283, 287, 290, 293, 318, 339, 421, 432, 437, 510, 525, 530, 535, 536, 540, 553, 556, 558, 581, 585, 591; PUE1, no. 4 (*PL*, Eugene III, no. 218; JL, 9118); PUN, no. 66 (*PL*, Eugene III, 539; JL, 9157); PUKHL, no. 52 (*PL*, Celestine II, no. 26; *RRH*, no. 220; JL, 8479).

[5] See, e.g., *PL*, Eugene III, no. 183, 292, 532; *APRI* 1, no. 204 (JL, 8919); *Historia monasterii S. Augustini Cantuariensis*, 390-91, no. 22 (*PL*, Lucius II, no. 80; JL, 8581), 391-92, no. 23 (*PL*, Lucius II, no. 82; JL, 8580); PUE2, no. 34; PUF1, no. 42 (JL, 8822), 55; PU in Piemont, no. 7 (*IP* 6/2, 215/12).

canons of St. Paul, Verdun who had sued a certain Peter, a cantor of Verdun, claiming that because the same 'Peter had built a mill in the township (*fundus*) of St. Maurice and diverted the water of the river Scantia from the ancient course to it, he has diminished for your mills, which had been situated further down, the assiduity of milling.' The cause was delegated to the cardinal-priest Gilbert of S. Marco and the cardinal-deacon John(3) Paparo of S. Adriano 'to be terminated through a concord,' and was duly 'terminated by them with this form and received by both parties with approval: indeed, you have offered to the aforesaid Peter ten pounds for the expenses which he had incurred in the same mill, namely with this pact, so that the same mill is destroyed and another mill is not further built through him or another in a new or old riverbed of the same water.'[1] It must have been substantially on account of causes such as these that Bernard of Clairvaux admonished Eugene in the *De consideratione* to remember that if he were Christ's disciple he was obliged to follow Him, and to 'pursue and punish' those who 'had changed a house of prayer into a place of business.' 'Let such businessmen embarrass you, if that is possible; if not, give them reason to fear. You too have a whip. Let the moneychangers be afraid, and not trust in their money, but lose confidence in it. Let them hide their money from you, knowing that you are more apt to throw it away than take it.'[2]

None were immune to the realities of twelfth-century civilisation, however. As L. Little pointed out, the success of the Cistercian economic system is 'legendary, as is also the embarrassment of riches it produced.' As a result, by the end of the twelfth century popular clichés had arisen about being as wealthy or crooked as a Cistercian, or about the Cistercians being the new Jews of Europe. But the Cistercians did not slip casually into the profit economy, as the Black monks before them had. Rather, if even for the most part unintentionally, 'they plunged headlong into it.'[3] C.B. Bouchard, in fact, argued more recently that holiness could in fact be

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[1] PUF1, no. 55.

[2] *De consideratione*, Bk. 1. XI. 14 (45-46); see also, *De consideratione*, Bk. 2. VI. 10 (58). See, *APRI* 2, no. 403 (JL, 9603), from Eugene to the general chapter of Cistercian abbots who had convened at Cîteaux: *Ut autem apud eum de orationibus vestris promptam semper valeamus invenire fiduciam, et quod nostris meritis non valemus, vestris intercessionibus assequamur...* Here *prompta...fiducia* clearly seems to have been intended as a metaphor in the sense of 'ready credit.'

[3] L. Little, *Religious Poverty*, 93, 96. On this, in general, see, C.B. Bouchard, *Holy Entrepreneurs*; L. Little, *Religious Poverty*, 90-96, 175-76; J. Gilchrist, *Economic Activity*, esp. 42-43, 100-04; G. Constable, *Spiritualia*, 316-31; J.E. Madden, 'Business Monks, Banker Monks, Bankrupt Monks: The English Cistercians in the Thirteenth Century,' *Catholic Historical Review* 49 (1963-64), 341-64; C.C. Graves, 'The Economic Activities of the Cistercians in Medieval England (1128-1307),' *Analecta sacri ordinis Cisterciensis* 13 (1957), 3-62;R.A. Donkin, 'Settlement and Depopulation on Cistercian Estates during the Twelfth and Thirteenth Centuries, Especially in Yorkshire,' *Bulletin of the Institute of Historical Research* 33 (1960), 141-65; R.A. Donkin, 'The Urban Property of the Cistercians in Mediaeval England,' *Analecta sacri ordinis Cisterciensis* 15 (1959), 104-31; B. Waites, 'The Monastic Settlement of North-East Yorkshire,' *Yorkshire Archaeological Journal* 40 (1959-62), 478-95; M.W. Barley, 'Cistercian Land Clearances in Nottinghamshire: Three Deserted Villages and their Moated Successor,' *Nottingham Mediaeval Studies* 1 (1957), 75-89; C.R. Cheney, 'A Letter of Pope Innocent III and the Lateran Decree on Cistercian Tithe-paying,' *Cîteaux commentarii Cistercienses* 2 (1962), 146-51; E. Hoffmann, 'Die Entwicklung der Wirtschaftsprinzipien im Cisterzienserorden während des 12. und 13. Jahrhunderts,' *Historisches Jahrbuch*

combined with economic success, and challenged the assumption of most scholars that even the early Cistercian leaders aimed at a lofty and radical separation from economic transactions; and that, from the beginning, even at Cîteaux itself economic transactions were accepted as normal.[1] Indeed, as early as the mid-twelfth century Cistercian houses, like all other houses, were regularly utilising the papacy in its temporal and judicial spheres. For example, Lucius II confirmed for the Cistercian abbot and brethren of Bellevaux a certain *potestas de Cerei* and its church, conceded to them by the archbishop of Besançon.[2] In June 1145-46 Eugene III confirmed for them numerous lands, tithes, *pertinentia*, granges, pastures, fisheries, and churches conceded to them by the same archbishop.[3] In November 1145-46 he wrote to them as they had brought a suit to the curia against the canons of St. Stephen, Besançon who had 'caused the pastures of Valeray, which you have hitherto possessed quietly and pacifically, to be with temerarious audacity inserted and confirmed in the privilege granted to them by us'—the letter also confirmed their possession of four other estates, 'with all of their appurtenances, just you possess them at present justly and peacefully.'[4] In May 1152 Eugene confirmed for the German Cistercian abbot of Ebrach a salt-mine donated by the bishop of Bamberg, including stipulations for the *medietas lucri* of the mine.[5] The abbot further had confirmed a certain forest including a *castrum* which had been offered over to the monastery by Frederick I who was then duly enfeoffed with the *castrum*.[6] And in March 1153 Eugene confirmed a transaction undertaken at the curia between the Cistercian abbey of Valloires and another church through the mediation of two cardinal-bishops.[7] More significantly, sometime in the first half of 1153, probably near the end of his life, Eugene ordered the general Cistercian chapter to allow the Roman abbey of Trefontane—of which Eugene himself had previously been abbot—to maintain, in the face of the hostility of the Romans, a *castrum* in the Roman District against the restrictions of the Cistercian Order at least so long as until its brethren should be able to contract a reasonable exchange of properties.[8]

One poignantly illustrative example of these things comes from John of Salisbury's opprobrious, perhaps scurrilous, anecdote recounting the return journey from his German legation of the Carthusian papal chamberlain, Cardinal-priest Jordan of S. Susanna—one of only four

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31 (1910), 699-727, here at, 702; J.T. Noonan, *Usury*, 52-53, 56-57, 110, 144-45; D. Knowles, *Monastic Order*, 689-90; G. Duby, *Knightly Class*, 222, 251, 255; H.L. Adelson, *Medieval Commerce* (Princeton, 1962), 44; J. Van Engen, *Crisis of Cenobitism*, 281.

[1] C.B. Bouchard, *Holy Entrepreneurs.*

[2] PUF1, Nach. Gott., no. 27 (JL, 8584).

[3] PUF1, Nach. Gott., no. 30 (JL, 8819).

[4] PUF1, Nach. Gott., no. 31 (JL, 8832); at the same time the pope wrote to the same canons of St. Stephan, reprimanding and ordering them to return the said privilege to the curia and respond on account of their fraud: *EPRI*, no. 192 (JL, 8833).

[5] *APRI* 2, no. 401 (JL, 9574), 402 (JL, 9575).

[6] *APRI* 2, no. 401 (JL, 9574).

[7] PUF4, no. 63 (JL, 9378).

[8] Varietà, 400-03, no. 1 (*IP* 1, 173/3; JL, 9604); see, on the date, *IP* 1, 173/3 n.

members of the new austere monastic orders promoted to the college in this period, and the only one under Celestine II or Lucius II—who briefly tarried at his own Carthusian house of Le Mont-Dieu (near Reims). Though critical, the story was perhaps representative in this regard of public sentiment towards the unsavoury *necessitates* to which the curia was compelled to attend. As John of Salisbury related, the chamberlain Jordan, returning to Italy, 'turned aside into France, for the purpose, he said, of visiting the hermitage and brethren of Le Mont-Dieu, but rather (as it is believed by most) for the sake of lucre and stretching out his domination in transit.' At length, when about to depart Le Mont-Dieu, Jordan offered the 'holy' prior of the house twenty marks 'from the mammon of iniquity to make good the various needs of the church, the saintly man would not deign to accept it, though it is allowed he was greatly in want, rather responding to the man in the spirit and nearly in the words of Peter: "Let your money perish with you, for you have no part in our lot nor we, by the grace of God, part in yours [Acts 8. 20]." And standing before him, in front of his face, he began to hear the bitter stories of his life and infamy, which it would be too long to retell.'[1]

In fact, Le Mont-Dieu itself had obtained in late 1145 a papal privilege of protection—modifying and omitting all of the spiritual clauses of a privilege, without protection clause, of Innocent II[2]—protecting and confirming 'the place itself and whatever in lands, woods, waters, fisheries, or other things...have been conferred upon you by just means or in future will be conferred.'[3] Nevertheless, Jordan was harangued because he 'had made his Chartreuse a byword, on account of the standard weight, which transcends others in weight, with which the offerings of the highest pontiff had been accustomed to be weighed out while he was chamberlain. For it is said in Rome to this day, "It is imprudent of any who is paid, if he does not weigh out to the mark of Chartreuse; if he lends, let him weigh out to the city measure."[4] For thus Jordan was regarded in business dealings.'[5] For Jordan, his efficiency in the increasingly important fiscal office of papal chamberlain—indeed his obligations as such included collecting the revenues due to Rome—was an apparently thankless talent. As I.S. Robinson astutely noted, 'the mid-twelfth

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[1] *HP*, 77-78.

[2] *PL*, Innocent II, no. 246, col. 296-97.

[3] *PL*, Eugene III, no. 52. L. Little, *Religious Poverty*, 87, pointed out that sites for Carthusian monasteries 'were selected so that the monks would not suffer any of the confusion or contamination of urban society. One side effect of this voluntary isolation was their key role in developing iron works in the forests and mountains of Dauphine and in thus making Grenoble the centre of an iron trade.'

[4] Since Carolingian times, secular and ecclesiastical authorities made provisions to inspect weights and measures. Following this tradition, the Parisian theologians around Peter the Chanter demanded restitution of all gains derived from fraudulent units of measurements. J.W. Baldwin, *Masters*, 266.

[5] *HP*, 77-78. Bernard of Clairvaux repeated these things in a letter to the cardinal-bishop Hugh of Ostia in early 1152, assailing the 'sacrilege' of the legate Jordan who looted every church he visited and promoted to benefices any good-looking youth. Bernard of Clairvaux, *Letters*, no. 290 (B.S. James, no. 355). Bernard also noted, however, that 'a very different person is John(3) Paparo, of whose praises the Church is full, because everywhere he is a credit to his ministry.'

century denunciations of avaricious legates are in fact convincing evidence of the effectiveness of the cardinal legates as an instrument of papal government.'[1]

In the end, it appears to have been exceedingly difficult for most important clerics to separate their temporal and spiritual interests. In this way, revenues sources such as *altaria* and sometimes tithes were classified as *spiritualia*. Temporalities were in fact tied to spiritualities; and 'private' or corporate ownership or possession was part and parcel of the ecclesiastical culture and infrastructure. Churches were largely self-financed; and if anything it was the responsibility of the local churches to subsidise the central organisation, the papacy. And thus, internal competition and jealously of goods and *iura* led to continuous *controversiae*; and wealth was accompanied by a basic vulnerability to the greater and lesser lay classes. The papacy served the churches as a high court and arbiter, and as the ultimate temporal advocate. And it was these services, at mid-century, which validated papal primacy. That the business and output of the curia and chancery became dominated by these roles was evidenced—beyond the preponderance of privileges of protection which, similarly, often combined the temporal and spiritual rights of houses—through their letters in the relative dearth of surviving examples concerning purely spiritualities, but especially reform measures. Even so, any direct 'policies' of reform themselves required funding and financing. Thus, even when the papacy affirmed the replacement of secular for religious clerics in various houses the act itself invariably concerned some monetary outlay, and resulted in financial complications.

Again, the curia itself was in chronic need of money: curial offices were supported not from a common treasury but largely by the fees paid for the exercise of their function. At the same time, the old traditions and assumptions about gift-giving lingered in the new money-based and commercial economy. It had always been a matter of course that those in power were tendered offerings; consequently they could not be banned root and branch. Yet it was these offerings, *munera*, which were condemned when they were given to influence judgement—the Latin vocabulary possessed no unambiguous term for bribes; and in the canon of the Mass even the bread and wine to be consecrated were described as gifts and offerings, *dona et munera*.[2] G. Constable in particular underscored the general haziness in this period in thought and terminology with regard to what precisely constituted or defined 'spiritualities' over against 'temporalities,' both in terms of the so-called 'spiritual' revenues and spiritual things, so that even the courts in the eleventh and twelfth centuries had difficulties in establishing the difference between spiritualities and temporalities.[3] According to W.E. Lunt, 'each word had a variety of meanings, and an attempt

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[1] I.S. Robinson, *Papacy*, 164.
[2] J.T. Noonan, *Bribes*, 140.
[3] G. Constable, *Spiritualia*, 304-08; G. Constable, *Monastic Tithes*, 3-6, 83-98, 120-21; on this, see also above, ch. 2.4-2.6.

to define all their usages would lead far afield and end probably in an inextricable labyrinth.'[1] Likewise, a major tenet of the reform campaign against simony and lay investiture consisted in the insistence that the temporalities and spiritualities of an ecclesiastical office, or the *regalia* and office, were indivisible if not indistinguishable. The argument against simoniacs was that the possessions of a church could not be sold without the spiritualities and consecration. The episcopal office with all of its appurtenances was an indivisible unit: without the possessions, the office ceased to exist for without the possessions a bishop could not fulfil his duties. Episcopal possessions were consecrated by God.[2] This type of duality or paradox was representative generally of ecclesiastical culture in the second half of the twelfth century. And it resulted in an inordinate if necessary jealousy of clerics' 'temporal' holdings and rights. And the Church, as an independent juridical community, necessarily required its own ultimate authority when claims or aspirations to these things clashed. Papal primacy suited this need.

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[1] W.E. Lunt, *The Valuation of Norwich*, 75-78, here at, 75; also, G. Constable, *Spiritualia*, 308; C.B. Bouchard, *Auxerre*, 14.

[2] These things were affirmed by both Placidus of Nonantula, writing in 1111, the same year as Paschal II's Concession of Sutri, and 'Gratian;'see, Placidus of Nonantula, *Liber de honore Ecclesiae*, *MGH SS Libelli de lite* 2, 586; see also, R.L. Benson, *Regalia*, 125; Gratian, *Decretum*, C. 1 q. 3 d. a. c. 1, c. 7, C. 1 q. 5 d. p. c. 2, C. 16 q. 2 d. p. c. 7, C. 23 q. 8 d. p. c. 20; see also, Gratian, *Decretum*, D. 32 c. 10, D. 50 c. 39, D. 63 d. p. c. 28, D. 81 cc. 16-18, C. 1 d. init., C. 1 q. 3 cc. 2, 3, 4, 7, 15, C. 1 q. 4 d. p. c. 10, C. 11 q. 1 d. p. c. 26, C. 12 q. 2 c. 37, C. 16 q. 1 d. p. c. 19, c. 22, C. 17 d. init., C. 17 q. 2 c. 1, C. 23 q. 8 d. p. c. 25 (see, A. Winroth, Decretum, 201, 203, 206, 213). See, on this, R.L. Benson, *Bishop-Elect*, 53-55, 203-334; G. Constable, *Monastic Tithes*, 83-98; W. Ullmann, *Growth*, 409-10. S. Chodorow, who emphasised the spirituality of Bernard of Clairvaux's ecclesiology, also acknowledged that even the abbot himself could not fully separate the Church's temporality from its spirituality. S. Chodorow, *Gratian*, 72. For Gerhoh of Reichersberg, the Church's primary difficulty stemmed from the possession of *regalia* and the consequent blurring of the boundary between the secular and ecclesiastical spheres—a view, added R.L. Benson, maintained by many other commentators; see, Gerhoh of Reichersberg, *De investigatione Antichristi*, 391-93; R.L. Benson, *Bishop-Elect*, esp. 309-13; see also, P. Classen, *Gerhoh von Reichersberg*, 8-9, 42-47, 105-07, 130-31, 317. Thomas Aquinas, by a piece of casuistry, would utilise the spiritual-temporal dichotomy to mitigate the potential implication of simony: in sum, spiritual things could be given for temporal things ordered to spiritual things. J.T. Noonan, *Bribes*, 222: 'In this analysis a crusade was a temporal thing ordered to a spiritual good; a bridge...was ordered to a spiritual good; and any charitable collection was ordered to a spiritual good. By the extraordinary simple move of categorising as spiritual every temporal act ordered to the spiritual, the sin of simony no longer endangered the exchanges by which crusades were organised, churches built, and civic improvements financed. An economy was validated in which one of the most spiritual of objects, the fate of the soul after death, could be affected by cash laid out on earth, and the exchange would not count as an exchange of the earthly for the heavenly.'

CONCLUSION

Generally, those writers who have undertaken some appraisal of the relative merit of the systems of papal justice in the central Middle Ages have been measured but favourable.[1] At worse, those systems offered no inferior option, while the sources by and large suggest that applicants and litigants could expect, if a case was prosecuted by both sides in good faith, a remarkably speedy denouement to their cause; and settlements achieved at the curia, as well as sentences, were largely observed. Concomitantly, if bishops' courts were in fact fleeced in the course of the twelfth century of their right to settle all causes in the first instance, their own first instance case-load presumably grew. Papal delegation, likewise, far from undermining diocesan jurisdiction, almost certainly bound more tightly together diocesan administration and organisation. Furthermore, as F.W. Maitland pointed out at the end of the nineteenth century, papal justice cut across geographical limits set to diocesan justice: 'obstacles which often stood in a litigant's way.' If one wished to sue as co-defendants a man at Lincoln and another at York, no English prelate had power over both: in the English ecclesiastical judicial system, Canterbury and York might have been separate units; but England was no unit. 'At the growth of the court of Rome's judicial power,' Maitland concluded, 'we cease to wonder when we see how uncertain, how hotly debated are the boundaries which mark off the spheres proper to the other courts. The choice lay between anarchy and the *plenitudo potestatis*.'[2]

Later, R.W. Southern supposed that, ultimately, the papal machinery of government in the high Middle Ages 'was as effective as any government could be before the late nineteenth century.' And like any government of the time, the papacy was constantly engaged in war or war's preparation, in diplomacy, in the management of estates, and in the assessment and collection of taxes. But 'by far the most highly developed part of the organisation was that which dealt with the various stages of legal processes.' While he observed that 'the shortcomings of the court of Rome as a fount of justice stand out so prominently in the records and are so amply celebrated by moralists and satirists that a balanced view of the system is hard to come by,' since 'that system existed and was available to all, even those who disliked it had recourse to it.' More importantly, he observed that the curia would not have attracted so many suitors had the justice which it offered

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[1] See, e.g., J. Sayers, *Judges Delegate*, xx-xxv, 99-02, 108, 112-13, 125, 132, 147-48, 160, 164-66, 216, 266-67, 275; C.R. Cheney, *Becket*, 51-52, 76-68, 75, 144; C.R. Cheney, *Innocent III and England*, 115-16; R.W. Southern, *Western Society and the Church*, 116-21; F.W. Maitland, *Canon Law*, 108, 113-14, 122; also, Z.N. Brooke, *English Church and the Papacy*, 214; Lord Cooper (Thomas Machay), *Select Scottish Cases of the Thirteenth Century* (Edinburgh, 1944), xi, xxx; G.B. Flahiff, *Prohibitions*, 107.

[2] F.W. Maitland, *Canon Law*, 113-14, 122.

not seemed preferable to that which could be had elsewhere. At the local courts there was a real risk of intimidation of witnesses and parties; and while recourse to Rome was more costly, it was relatively impartial, and its judgement emanated from the papal plenitude of power, lending it, in the legal and theological atmosphere of the twelfth century, a unique prestige. Accordingly, by '1125 or thereabout the papal machine was in very good order;' and countless examples could be adduced whereby the 'the turbulence of twelfth-century litigations gave way, at least on the surface, to a well ordered sequence of judicial procedures controlled by the papal court.' The flow of business to the curia had furthermore one great positive result, 'a by-product of the great uncontrollable flow of litigation,' in that it contributed to tidying up large areas of ordinary life: 'It drew into one intricate but coherent system the vast complex of religious orders that grew up in the twelfth century.' To his credit, each of Southern's observations here appear to be borne out in the papal record of the period 1143-53.[1]

Otherwise, C.R. Cheney advised that to 'measure the curia as a court of law one cannot adopt absolute standards of abstract justice.'[2] In the face of evidence which exposes its defects and abuses, 'we must be on guard against facile moralising and anachronistic views of what a judicial system in the twelfth century ought to have provided.' The abuse of appeal is easy to point out, he observed, yet it is far less easy to determine the extent to which Rome gave better justice to cases than could have been had in the courts of the ordinary or the metropolitan or the king. And the papal cases which were compromised by dishonest litigation, politics, and violence must be offset, he concluded, by the countless examples which were settled or adjudged without difficulty. The legal expertise which might be served at the curia or conveyed in letters to local judges delegate was, moreover, more exact than that which might have been had in the synod or other sessions of the local diocesan. Local influences likewise were mitigated: 'In theory, at least, the system had its advantages.' Furthermore, all of the drawbacks of the papal systems of justice, especially the need to spare no expense in ensuring the success of one's cause, were applicable to all existing systems of justice: 'The reign of law was never established. What prevailed was the reign of lawyers, subject at times to force, bribery, and diplomatic pressure. We ought not on this account to condemn the system out of hand or to suppose that the same canon law could have taken shape in England without the directive force of Rome.' And thus, when W. Stubbs spoke of the 'paralysis of discipline' caused by the papal appellate system,[3] he surely succumbed to hyperbole. And while it might have been possible to reform the system, it itself was so inexorably established that it could not have been checked.[4]

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[1] R.W. Southern, *Western Society and the Church*, 115-17, 119, 121.
[2] C.R. Cheney, *Innocent III and England*, 116.
[3] See, W. Stubbs, *Chronicles and Memorials of the Reign of Richard I 2*, 436-37.
[4] C.R. Cheney, *Becket*, 51-52, 68, 75.

If nothing else, the increasing incidence of papal delegation from mid-century—for whatever immediate reasons cases were in fact being delegated—demonstrates that papal supply could not keep up with the demand of the provinces. Where J.C. Moore principally failed in his condemnation of the twelfth-century systems of papal justice was in not satisfactorily answering why, or else in not understanding the fundamental reality that, as far as the evidence seems to indicate, the papal court and justice were increasingly sought and preferred.[1] Applying this postulate to Moore's own argument, its logical extension was that churchmen and laymen alike from the second half of the twelfth century preferred an inferior product, or had recourse to it only for the sake of the extra avenues to dishonest litigation and evasion which it opened up. And even in that event, and if clerics were simply coming to the curia increasingly as a process of habit, that they were bypassing the increasingly redundant intermediary stages knowing through experience that any cause would ultimately wend its way to Rome, the very fact remained that so many causes were going to Rome. And even if many claimants were principally motivated by dishonesty, those features of the papal systems which appear to have offered avenues particularly susceptible to abuse, as J. Sayers has pointed out, were in fact maintained for the sake of hedging on the side of fairness.[2] Appeal, the crux of papal justice and authority, cut, so to speak, both ways.

So what was the raison d'être of the mid-twelfth century papacy? It provided an ultimate authority, especially as protection, confirmation, and adjudication, craved by local churches and churchmen—discounting laymen who likewise had recourse to it—for an expanding and coalescing Church. The question then remains: did the provinces alone give the curia its authority out of their own need? Mostly, it did; at least for the degree and kind of authority which it exercised in the period around the mid-twelfth century. While the papacy's wars and other circumstances in the late eleventh and early twelfth centuries had certainly won it prestige of its own, it appears that, by and large, and in a circular fashion, by the mid-twelfth century need was creating faith in a centralising papal authority. R.W. Southern noted that western Christian unity centred upon Rome resulted by and large from 'spontaneous impulses which led men to St. Peter.'[3] But these impulses did not move merely the religious, seeking a reform-minded patron or even a means of evading local authority; all sought Rome; and episcopal jurisdiction around the mid-twelfth century was being by no means undermined. Papal primacy, created by the churches, provided all a safeguard, especially the episcopate, against whatever they regarded as violations of their 'legal' rights.

The curia continued to support reform measures, to be sure; but internal 'reform' seldom

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[1] See, J.C. Moore, *Innocent III*, 295-306; J.C. Moore, *Baldwin*, 79-89.
[2] J. Sayers, Judges Delegate, 99, 112-13.
[3] R.W. Southern, *Western Society and the Church*, 97, see also, 127; M.G. Cheney, *Avranches*, 178.

took a place in its daily round of business. Similarly, the independence or *libertas* of the Church and its churches was, by the mid-twelfth century, no longer 'policy' in a direct or grand sense: it was by now merely a principle of law and society to be protected and maintained. The political landscape in this period, especially in Germany, contributed to this. As a result, the curia had little cause to engage in rhetorical or propaganda campaigns with the great princes of the world. Indeed the situation would change drastically with the ascendancy of Emperor Frederick I. Even then, however, the conflict would evolve into a territorial one. At the same time, the curia in this period never ceased attending to its own territorial-political 'policy.' And as the maintenance of territorial sovereignty in central Italy would always be implicitly or indirectly tied to the idea of the Church's *libertas*, it would always remain at the forefront of papal 'policy' generally. Likewise, the independence of papal revenues from the papal Patrimony was necessary for the governance or oversight of a free and unified Church; while the churches' demands upon the curia only exacerbated its needs. But in the end, in the more well established kingdoms, the questions or 'policies' of moral reform, of the purity and competence of the clergy, of the status of the faith and of the average Christian largely remained outside the scope of the central administration at Rome,[1] while the curia itself took little care to answer or satisfy any internal critics who may have desired a different role and practice for the pope and his curia. Paradigmatic of all of this is an almost complete lack of papal evidence from this period attesting to a growing heresy problem. For, even that one 'heretic' or 'schismatic' who significantly garnered the papal attention—Arnold of Brescia—did so merely in the political arena, as a major figure in the revolutionary movement in Rome.

Ultimately, the lawyers were more important to the character of the mid-twelfth century papacy than the reformers; and the papacy became the fount of the Law and its justice. In the canons collected in the works of the canonists down to and including 'Gratian,' it has been said, many aspects of the living canon law—including procedure, monastic exemptions, and the law of tithes and church property—went virtually untreated.[2] These were all the prime aspects of papal

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[1] On the nature or definition of the *Ecclesia*, or *Ecclesia Romana*, whether it constituted the ecclesiastical hierarchy or Christendom broadly, see, S. Chodorow, *Gratian*, 212-23; F. Kempf, 'Die päpstliche Gewalt in der mittelalterlichen Welt: Eine Auseinandersetzung mit Walter Ullmann,' *Saggi storici intorno al papato* (*Miscellanea historicae pontificiae* 21: Rome, 1959), 117-69; F. Kempf, 'Das Problem der Christianitas im 12. und 13. Jahrhundert,' *Historisches Jahrbuch* 79 (1959), 104-23; the works of A.M. Stickler, including, 'Concerning the Political Theories of the Medieval Canonists,' *Traditio* 7 (1949-51), 450-63; G.B. Ladner, *Concepts of* 'Ecclesia' *and* 'Christianitas,' 49-78; G.B. Ladner, *Medieval Thought*, 403-22; B. Tierney, *Foundations*, esp. 23-46; B. Tierney, 'The Continuity of Papal Political Theory in the Thirteenth Century: Some Methodological Considerations,' *Mediaeval Studies* 27 (1965), 227-45; W. Ullmann, *Growth*; Y. Katzir, *The Second Crusade and the Redefinition of* Ecclesia, Christianitas *and Papal Coercive Power*, esp. 3-8; R.W. Southern, *Western Society and the Church*, 37-39.

[2] S. Chodorow, *Dishonest Litigation*, 197, paraphrasing S. Kuttner, 'Some Considerations on the Role of Secular Law and Institutions in the History of Canon Law,' *Scritti di sociologia e politica in onore di Luigi Sturzo* (Bologna, 1953), 351-62.

daily business in the period 1143-53, even if they did not lead to any great theoretical statements. According to G. Barraclough, every aspect of Christian life and ecclesiastical organisation in this period needed definition; and 'that is why recourse to Rome and to the processes of the Roman curia grew at so phenomenal a speed after the pontificate of Innocent II. The advantages the pope's authority conferred were too manifest to be neglected.'[1] But the curia's tribunal itself was as important as any aspect of its organisation or administration. M.G. Cheney observed that 'judicial supremacy was regarded as a necessary part of universal authority.' She observed that the judicial machinery of the curia developed only gradually in order to serve the litigants who presented themselves: 'No great effort seems to have been made to attract them, and this would indeed have been unnecessary, for the local churches on their own initiative looked towards Rome.'[2] Papal primacy placed an unquestionable judge and supreme authority between prelates of equal or contending status. But the need for a high ecclesiastical court assumed increasing importance for even the most minor churches and churchmen as the complexity of social, political, and economic arrangements grew. At the same time, the goods, revenue sources, and rights of churchmen and their corporations, becoming increasingly more far-flung and complex, increasingly came into conflict. These things, in turn, had created a culture of rampant and fierce clerical competition. Thus, it was not merely the judicial machinery *per se*, but all of the systems of justice which confirmed, protected, and enforced rights in this period which were not only necessary but the primary parts of the pope's authority, and were in many ways exercised as ends to themselves.

The papacy functioned in this period not so much as ruler of the Church as its overseer, especially of the material well-being of the churches or their possessory rights. And even though the pope in this period was involved in the affairs of churches over a vast geographical area, and even though variously at one time or another he was involved in most aspects of Church administration, he had no regular and direct role in the basic governance or ministry of the parishes or dioceses of the Church. Thus, although the pope did intervene in the affairs of the most minor churches or houses, he did so invariably in response to an appeal or even first-instance suit, or otherwise in response to a petition for confirmation. Indeed, first and foremost, the papal office was responsive: that is, it operated almost exclusively through a petitionary system. Both the prelature and the religious, including those 'new orders,' sought, in turn, the pope's advice, his tribunal, confirmation, beneficence, protection, and redress. Even those 'decretals' whose collection and preservation began in earnest in this period represented merely responses to legal questions in legal matters. The presence and availability of professional legal expertise at the curia was quite probably a part of these processes. Thus, while the papal record speaks of an institution,

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[1] G. Barraclough, *Papacy*, 104.
[2] M.G. Cheney, *Avranches*, 177.

the papacy and Church, attempting and succeeding fitfully to centralise, the curia itself administered with little initiative and only relatively bureaucratically—that is, through the function of its writing offices—in the mid-twelfth century. Similarly, the record reveals basic though far from all-encompassing standards of juridical procedure: impetration or petition, or plaint, sometimes trial or examination, perhaps sentencing or settlement, and invariably documentation, often involving some form of delegation. Much of everything else proceeded seemingly *ad hoc*. The function of the curia was primarily the exercise of the dispensing of its authority and justice; but this was done as a matter of routine through decentralised systems, that is, through delegation, principally to the members of the episcopate.[1]

The bulk of the business brought to Rome was in fact delegated. Delegation in theory was a prudent and efficient system in that the most efficacious prelates, or even lay princes, could be singled out for any task at hand. In this way, in practice the papacy was an extremely useful and efficient clearing house for the various holders of power and jurisdiction. And thus, the value of the curia, beyond its own tribunal, and beyond the outright delegation of causes to judges delegate, was its ability and authority to order the pertinent local or regional authorities to execution or enforcement, or to marshal multiple 'agents' at once, or to address simultaneously multiple offenders to provide redress in a particular case, all through an intelligible written Latin. Similarly, while the papacy was freely rewarding the greater sees with its distinction, with the *pallium*, and confirming metropolitans and occasionally primates in their dignities, the record of the daily business of the curia provides no evidence of any kind of breakdown or diminution of episcopal authority. On the contrary, the record indicates for the most part a relationship of fluid cooperation. The central offices of the papacy had no real way of directly executing or enforcing its acts in the provinces apart from cardinal legates. Thus, at the same time that the curia became increasingly occupied with the petitions and plaints, that is, with the business, of the most minor churches, it recognised its interdependence with the episcopate. Thus, there was a paucity of spiritual exemptions issued in original papal privileges of protection. At the same time, papal primacy demanded that the churches look towards Rome: the process was in some ways circular. In this way, the curia also functioned largely for its own sake: that is, the papacy could never seriously curtail its appellate system as its justice, its 'refuge,' was the fulcrum of its practical power and primacy.[2] Nevertheless, the curia had throughout a firm sense of the practical or logistical limitations of the pope's primacy, and only availed itself of the opportunity or need to proclaim the full implications of that primacy when the chain of command had broken down or the

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[1] 'Historians have traditionally marked off the pontificate of Innocent III as beginning the transformation of the Church from a decentralised, "feudal" Church into an absolute monarchy. As with any generalisation, it is not perfect, but it does have a core of undeniable truth.' K. Pennington, *Papal Monarchy*, 10.
[2] See, e.g., R.W. Southern, *Western Society and the Church*, 119; I.S. Robinson, *Papacy*, 185, 199.

circumstances were unique. In short, by 1150 there was no overarching and well articulated papal 'policy.' Basically, the curia was merely attempting to keep up with the growing influx of daily business. And this meant that the curia, for the next century and more, would be inherited by the lawyers.

APPENDIX 1 PAPAL ARENGAE *IN THE LETTERS, 1143-53*

APPENDIX NUMBERS:

1 (PUF3, no. 30 [*Chronica S. Bertini,* 801; *PL*, Eugene III, no. 15-16; JL, 9510]).
2 (*PL*, Eugene III, no. 118).
3 (*PL*, Lucius II, no. 94).
4 (*PL*, Eugene III, no. 146).
5 (*PL*, Eugene III, no. 319).
6 (*APRI* 2, no. 391 [JL, 8784]).
7 (*PL*, Eugene III, no. 555).
8 (*PL*, Eugene III, no. 494).
9 (*PL*, Eugene III, no. 404).
10 (*PL*, Eugene III, no. 119).
11 (*PL*, Eugene III, no. 412).
12 (*PL*, Eugene III, no. 18).
13 (*APRI* 3, no. 84 [JL, 9007]).
14 (PUE3, no. 50).
15 (*PL*, Eugene III, no. 516 [PUS1, no. 70 (9/24/53-54): 'Der Text wiederholt das Breve Eugens III. vom 22. Juni 1152 JL. 9594 (*PL*, Eugene III, no. 516);' JL, 9594]).
16 (PUE1, no. 49).
17 (PUP, no. 46).
18 (*EPRI*, no. 212 [JL, 9722]).
19 (PU in Piemont, no. 5 [*IP* 6/2, 23/10]).
20 (Nachträge zu den römischen Berichten, no. 8 [*IP* 1, 141/31]).
21 (PUE1, no. 50 [*HP*, 88; JL, 9513]).
22 (PUF1, no. 41 [JL, 8756]).
23 (PU in Mailand, no. 9 [*IP* 7/1, 339/38; P-H *Iter*, 239; JL, 8749; the same, nearly, as *Antiquitates* 5, 259-60, *PL*, Innocent II, no. 158, col. 208-09, both from Innocent II]).
24 (*PL*, Eugene III, no. 97).
25 (*PL*, Eugene III, no. 361).
26 (*PL*, Eugene III, no. 244).
27 (*PL*, Eugene III, no. 346).
28 (*PL*, Eugene III, no. 222).
29 (PUF5, no. 74).
30 (*PL*, Eugene III, no. 534 [*Decretales*, Gregory IX, Bk. 2. VII. 4; JL, 9653]) .
31 (*PL*, Eugene III, no. 394).
32 (*APRI* 2, no. 388 [JL, 8775]).
33 (*PL*, Eugene III, no. 471).
34 (*PL*, Eugene III, no. 194).
35 (*PL*, Eugene III, no. 548).
36 (PUF5, no. 71).
37 (*PL*, Eugene III, no. 400).
38 (PUF5, no. 65).
39 (*APRI* 2, no. 400 [JL, 9564]).
40 (*PL*, Eugene III, no. 572).
41 (*APRI* 3, no. 76 [*IP* 3, 325/29; *IP* 10, 383/42; JL, 8929]).
42 (*PL*, Lucius II, no. 79).
43 (*PL*, Lucius II, no. 37).
44 (PUF6, Nach. Gott., no. 11 [JL, 8542]).
45 (PUF6, no. 56).
46 (PUF7, no. 70 [PUTJ1, no. 14; JL, 9438]).
47 (PUTJ1, no. 13).
48 (PUF2, no. 61 [JL, 9437]).
49 (PUF1, Nach. Gott., no. 42 [JL, 9669]).
50 (*APRI* 2, no. 401 [JL, 9574]).
51 (*APRI* 2, no. 402 [JL, 9575]).
52 (PUF6, no. 61).
53 (PUF5, no. 73).
54 (*Historia monasterii S. Augustini Cantuariensis*, 402, no. 30 [JL, 9537]).
55 (PUE2, no. 75).
56 (*EPRI*, no. 203 [JL, 9243]).
57 (PUF2, Nach. Gott., no. 15).
58 (PUKHL, no. 50 [*RRH*, no. 214; JL, 8472a]).
59 (*EPRI*, no. 202 [JL, 9237]).
60 (PUF8, no. 31).
61 (*APRI* 1, no. 211 [JL, 9074]).
62 (PUN, no. 46).
63 (PUE3, no. 70).
64 (PUE3, no. 78).
65 (*APRI* 3, no. 99 [JL, 9441]).
66 (*PL*, Eugene III, no. 125).
67 (*PL*, Eugene III, no. 169).
68 (*PL*, Eugene III, no. 228).
69 (*PL*, Eugene III, no. 281).
70 (*PL*, Eugene III, no. 335).
71 (*PL*, Eugene III, no. 511).
72 (*Historia monasterii S. Augustini Cantuariensis*, 390-91, no. 22 [*PL*, Lucius II, no. 80; JL, 8581]).
73 (*APRI* 3, no. 320 [(JL, 8575] [See, JL, *Addenda et corrigenda*—wrongly attributed to Lucius III]).
74 (*PL*, Eugene III, no. 554) .
75 (*PL*, Eugene III, no. 285)
76 (*PL*, Eugene III, no. 296) .
77 (*PL*, Eugene III, no. 305).
78 (*PL*, Eugene III, no. 28).
79 (*PL*, Eugene III, no. 469 [Wibald, no. 353]).
80 (Nachträge zu den PU in Italiens 5, no.10 [*IP* 5, 477/26]).
81 (Wibald, no. 354 [JL, 9521]).
82 (*EPRI*, no. 189 [JL, 8555]).

83 (*APRI* 2, no. 191 [JL, 8751]).
84 (PUF6, no. 63 [JL, 9358]).
85 (PUF5, no. 60).
86 (*PL*, Lucius II, no. 13).
87 (*PL*, Eugene III, no. 307).
88 (*PL*, Eugene III, no. 255).
89 (*PL*, Eugene III, no. 280).
90 (*PL*, Eugene III, no. 472).
91 (*APRI* 1, no. 204 [JL, 8919]).
92 (*PL*, Eugene III, no. 568).
93 (*PL*, Eugene III, no. 524) .
94 (*PL*, Eugene III, no. 480).
95 (*PL*, Lucius II, no. 50).
96 (PUF1, no. 43).
97 (*APRI* 2, no. 387 [JL, 8774]).
98 (PU in Venetien, no. 7 [*IP* 7/1, 106/1]).
99 (PUF7, Nach. Gott., no. 36).
100 (*PL*, Eugene III, no. 203).
101 (*PL*, Eugene III, no. 376).
102 (*PL*, Eugene III, no. 357).
103 (PUS1, no. 62).
104 (PU in Florenz, no. 11 [*IP* 3, 138/11]).
105 (*PL*, Eugene III, no. 580).
106 (PUF2, no. 33).
107 (*PL*, Eugene III, no. 288).
108 (PUF6, Nach. Gott., no. 15).
109 (PUF5, no. 72).
110 (*PL*, Eugene III, no. 195).
111 (*Historia monasterii S. Augustini Cantuariensis*, 391-92, no. 23 [*PL*, Lucius II, no. 82; JL, 8580)]).
112 (PUF1, Nach. Gott., no. 27).
113 (PUF1, Nach. Gott., no. 30 [JL, 8819]).
114 (PUN, no. 57).
115 (PUN, no. 51).
116 (PUF6, no. 59).
117 (PUE3, no. 65).
118 (*PL*, Eugene III, no. 379).
119 (*PL*, Lucius II, no. 41).
120 (PUE2, no. 56).
121 (PUE2, no. 55).
122 (PUF1, no. 51 [JL, 9171]).
123 (*PL*, Eugene III, no. 81).
124 (*PL*, Eugene III, no. 279).
125 (*APRI* 1, no. 218 [JL, 9176]).
126 (PUF8, no. 42).
127 (*PL*, Eugene III, no. 385).
128 (*APRI* 3, no. 91 [JL, 9292]).
129 (PUE3, no. 82).
130 (PUE2, no. 60).
131 (PUS1, no. 60).
132 (PUF8, 41 [*PL*, Eugene III, no. 547; JL, 9661]).
133 (*PL*, Eugene III, no. 336).
134 (*PL*, Eugene III, no. 449).
135 (PUF1, Nach. Gott., no. 36).
136 (PU in Pisa, no. 4 [*IP* 5, 62/213]).
137 (*PL*, Lucius II, no. 40).
138 (*PL*, Eugene III, no. 2).
139 (*PL*, Eugene III, no. 25).
140 (*APRI* 3, no. 55 [JL, 8516]).
141 (PU im ehemaligen *Patrimonium*, no. 2 [*IP* 3, 260/9]).
142 (*PL*, Eugene III, no. 292).
143 (*APRI* 2, no. 396 [JL, 9396]).
144 (*APRI* 3, no. 114 [JL, 9732]).
145 (PUE2, no. 45).
146 (PUF4, no. 63 [JL, 9378]).
147 (PUF3, no. 32).
148 (PUF1, no. 55).
149 (PUS2, no. 52).
150 (PU in Ligurien, no. 1 [*IP* 6/2, 382/1]).
151 (PU in Turin, no. 13 [*IP* 6/2, 174/14]).
152 (*PL*, Lucius II, no. 23).
153 (*PL*, Celestine II, no. 10).
154 (*PL*, Lucius II, no. 88).
155 (*PL*, Eugene III, no. 152).
156 (*PL*, Eugene III, no. 459).
157 (*PL*, Eugene III, no. 507).
158 (*PL*, Eugene III, no. 584) .
159 (*PL*, Eugene III, no. 565).
160 (*PL*, Eugene III, no. 566).
161 (*PL*, Eugene III, no. 145).
162 (PUS1, no. 59).
163 (Römische Analekten, 35-36, no. 3 [*IP* 1, 77/20]).
164 (PUF3, Nach. Gott., no. 6).
165 (*APRI* 1, no. 213 [JL, 9119]).
166 (*PL*, Eugene III, no. 175).
167 (*APRI* 2, no. 383 [JL, 8659]).
168 (*PL*, Eugene III, no. 351).
169 (PU in westlichen Toscana, no. 6 [*IP* 3, 432/100; JL, 9481]).
170 (PUE3, no. 58).
171 (PUF2, no. 69).
172 (PUF2, no. 66 [JL, 9685]).
173 (PUS2, no. 62).
174 (PUF2, Nach. Gott., no. 10).
175 (PUF8, no. 19 [JL, 8487]).
176 (PUF8, no. 22 [JL, 8624]).
177 (PUF8, no. 24 [JL, 8671]).
178 (PUF7, no. 57 [JL, 8912]).
179 (PU in Nonantola, no. 3 [*IP* 7/1, 298/1; P-H *Iter*, 238; JL, 8701]).
180 (PUE1, no. 38).
181 (PUE2, no. 43).
182 (PUE2, no. 52).
183 (Nachträge zu den PU in Italiens 9, no. 5 [*IP* 7/1, 298/2; JL, 8737]).
184 (PUF5, no. 62).
185 (PUF2, no. 65).
186 (PUE2, no. 63).
187 (*PL*, Eugene III, no. 209).
188 (PUE2, no. 59).
189 (PUF8, no. 32 [*PL*, Eugene III, no. 320; JL, 9297]).
190 (*PL*, Eugene III, no. 208).
191 (*PL*, Eugene III, no. 551) .

192 (*PL*, Eugene III, no. 297) .
193 (*PL*, Eugene III, no. 87).
194 (*PL*, Celestine II, no. 14).
195 (*APRI* 1, no. 212 [JL, 9115]).
196 (*PL*, Eugene III, no. 166).
197 (*PL*, Lucius II, no. 84).
198 (*APRI* 1, no. 201 [JL, 8829]).
199 (PUTJ1, no. 8 [JL, 8478]).
200 (PUTJ1, no. 9 [see, PUTJ1, no. 8]).
201 (PUTJ1, no. 11 [see, PUTJ1, no. 8]).
202 (PU in Sizilien, no. 3 [see, PUTJ1, no. 8]).
202a (PU in Malta, no. 2 [see, PUTJ1, no. 8]).
202b (JL, 8821 [see, *APRI* 1, no. 201 (JL, 8829)]).
202c (JL,9383 [see, PUTJ1, no. 8]).
203 (PUTJ1, no. 10).
204 (PUF4, Nach. Gott., no. 22).
205 (PUTJ1, no. 15).
206 (PUTJ1, no. 17).
207 (*PL*, Lucius II, no. 48).
208 (*PL*, Eugene III, no. 174).
209 (*PL*, Eugene III, no. 131).
210 (PUF6, no. 62).
211 (PUF2, no. 43 [JL, 8961]).
212 (*APRI* 3, no. 82 [*PL*, Eugene III, no. 141; JL, 8975]).
213 (*APRI* 3, no. 61 [JL, 8664]).
214 (*APRI* 3, no. 63 [*IP* 1, 27/17; P-H *Iter*, 238; JL, 8711]).
215 (*PL*, Eugene III, no. 569).
216 (*PL*, Celestine II, no. 42).
217 (*PL*, Eugene III, no. 474).
218 (*PL*, Eugene III, no. 467).
219 (*PL*, Lucius II, no. 91).
220 (*PL*, Eugene III, no. 560) .
221 (*PL*, Eugene III, no. 559).
222 (PUE2, no. 66).
223 (PUE3, no. 63).
224 (*PL*, Eugene III, no. 337) .
225 (*PL*, Eugene III, no. 308).
226 (*PL*, Eugene III, no. 289).
227 (*PL*, Eugene III, no. 323).
228 (*PL*, Celestine II, no. 35).
229 (*PL*, Eugene III, no. 370).
230 (*PL*, Eugene III, no. 537).
231 (*PL*, Eugene III, no. 364).
232 (*PL*, Eugene III, no. 284).
233 (PUE2, no. 34).
234 (PUE2, no. 42).
235 (Ältere PU in den päpstlichen Registern 3, no. 2).
236 (*EPRI*, no. 196 [JL, 8897]).
237 (*PL*, Eugene III, no. 450).
238 (*PL*, Eugene III, no. 447).
239 (*PL*, Eugene III, no. 588).
240 (*PL*, Eugene III, no. 527).
241 (PUE2, no. 72 [JL, 9611]).
242 (*PL*, Celestine II, no. 28 [*RRH*, no. 221; JL, 8481]).
243 (PUS1, no. 61).
244 (PUS2, no. 49).
245 (Le bolle pontificie, Montecassino, no. 19 [*IP* 8, 180/256]).
246 (Nachträge zu den PU in Italiens 5, no. 8 [*IP* 5, 522/4]).
247 (Nachträge zu den PU in Italiens 2, no. 9 [*IP* 3, 179/15; JL, 8497]).
248 (*Decretales*, Gregory IX, Bk. 2. VII. 3 [Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506]).
249 (*Historia monasterii S. Augustini Cantuariensis*, 403-04, no. 31 [JL, 8990]).
250 (PUP, no. 51).
251 (*PL*, Eugene III, no. 239).
252 (PUF1, no. 42 [JL, 8822]).
253 (PUF2, no. 46).
254 (PUF3, no. 33).
255 (PUE2, no. 69 [JL, 9546]).
256 (PUE1, no. 45).
257 (PUE3, no. 79 [JL 9547]).
258 (PUE3, no. 49).
259 (*PL*, Eugene III, no. 183).
260 (*PL*, Eugene III, no. 512).
261 (*PL*, Eugene III, no. 533).
262 (*PL*, Eugene III, no. 76).
263 (*PL*, Eugene III, no. 104).
264 (*PL*, Eugene III, no. 227).
265 (PUF2, no. 24).
266 (*PL*, Lucius II, no. 36).
267 (*PL*, Eugene III, no. 570/71) .
268 (JL, 9149 [complete text] [*PL*, Eugene II, no. 232]).
269 (*PL*, Eugene III, no. 298).
270 (*PL*, Eugene III, no. 521).
271 (*PL*, Eugene III, no. 579).
272 (*PL*, Eugene III, no. 577).
273 (*PL*, Eugene III, no. 126).
274 (*PL*, Eugene III, no. 484).
275 (Urkunden zur Geschichte von Farfa, 177-78, no. 1 [*IP* 2, 68/52]).
276 (*APRI* 1, no. 227 [JL, 9672]).
277 (*PL*, Eugene III, no. 513).
278 (*PL*, Eugene III, no. 200).
279 (*PL*, Eugene III, no. 562).
280 (*LC*, 428, no. 172 [*IP* 1, 191/1; JL, 8710]).
281 (PUF2, no. 71).
282 (*PL*, Eugene III, no. 9).
283 (*PL*, Eugene III, no. 563).
284 (*PL*, Eugene III, no. 492).
285 (*PL*, Eugene III, no. 473).
286 (PUF2, no. 50).
287 (*PL*, Lucius II, no. 47).
288 (*PL*, Eugene III, no. 274).
289 (*PL*, Eugene III, no. 399).
290 (*PL*, Eugene III, no. 151).
291 (*PL*, Eugene III, no. 148).

292 (*PL*, Eugene III, no. 427).
293 (*PL*, Eugene III, no. 199).
294 (*PL*, Eugene III, no. 354 [Otto of Freising, *Gesta*, 106-08; JL, 9344]).
295 (*PL*, Eugene III, no. 62).
296 (*PL*, Eugene III, no. 499).
297 (*PL*, Celestine II, no. 4).

APPENDIX 2 CARDINALS IN THE PAPAL LETTERS, 1145-53

Number of Papal Letters:[1]		Not Concerning Clerical *Controversiae*:	Concerning Clerical *Controversiae*:	Not Concerning Clerical *Controversiae* or Temporalities:	Total:
Cardinal:	Guido(4) de Crema, Antipope Paschal III, C-P of S. Maria in Trastevere (1158-64), C-D of S. Maria in Porticu (1145-58)	7[2]	3[3]	1[4]	10
	Imar, C-B of Tusculum (1142-62)	6[5]	11[6]	1[7]	17
	Alberic, C-B of Ostia (1138-48)	5[8]	8[9]	0	13
	Conrad, Pope Anastasius IV, C-B of Sabina (1128-53), C-P of S. Pudentiana (1110-28)	5[10]	4[11]	0	9

[1] That is, not including those letters which merely or broadly referred to 'our brothers,' as in the clause *fratrum nostrorum consilio* and the like—only when 'cardinals' specifically or specific cardinals were mentioned; also, not including subscriptions or *datum* or *signum* clauses—only the substantive parts of the letter.

[2] PU in Campanien, no. 10 (*IP* 2, 147/4) (7/23/51); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53); *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14) (5/29/53); *PL*, Eugene III, no. 319 (9/13/48); *PL*, Eugene III, no. 376 (1/23/50); *IP* 2, *147/3 (Anno 1145-51); PU in Turin, no. 13 (*IP* 6/2, 174/14) (5/2/53).

[3] *IP* 7/1, *239/23 (8/20/48); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 369-70, no. 941 (JL, 9393) (6/1/50); *IP* 1, 51/7 (10/1/51).

[4] *PL*, Eugene III, no. 319 (9/13/48).

[5] PUE3, no. 83 (Anno 1151-52); PUF5, no. 58 (summer 1144); PUF5, no. 61 (12/5/44); *PL*, Lucius II, no. 68 (11/19/44); *IP* 6/2, 135/16 (3/9/47); *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14) (5/29/53).

[6] PUF2, no. 24 (summer 1144); *PL*, Lucius II, no. 40 (5/15/44); PUF2, no. 27 (Anno 1144); PUE2, no. 45 (Anno 1145); PUE2, no. 52 (4/22/46); PUS2, no. 52 (5/19/45-46); *IP* 6/2, 119/6 (3/8/47); *IP* 2, 44/12 (2/5/50); PUF3, no. 32 (2/18-3/21 1153); PUF4, no. 63 (JL, 9378) (3/21/53); PUF3, no. 33 (3/21/53).

[7] PUF5, no. 61 (12/5/44).

[8] PUF7, no. 56 (April 1145); PUF5, no. 59 (autumn 1144); PUF6, no. 53 (autumn 1144); *PL*, Lucius II, no. 68 (11/19/44); *APRI* 1, no. 213 (JL, 9119) (8/16/47).

[9] PUF2, no. 24 (summer 1144); PUF6, no. 54 (autumn 1144); PUF9, no. 42 (2/28/44-45); *EPRI*, no. 193 (JL, 8877) (3/6/46); PUF7, Nach. Gott., no. 28 (Anno 1144-45); PUF7, Nach. Gott., no. 29 (Anno 1144-45); PUF7, Nach. Gott., no. 30 (Anno 1144-45); *IP* 6/2, 119/6 (3/8/47). For PUF7, Nach. Gott., no. 28, 29, 30, the editor, W. Wiederhold, gave the date 1138-46; these letters, however, almost certainly were written during Cardinal Alberic's French legation ca. 1144-45.

[10] Nachträge zu den römischen Berichten, no. 8 (*IP* 1, 141/31) (7/13/51); PU in Campanien, no. 10 (*IP* 2, 147/4) (7/23/51); *IP* 3, 4/14 (2/10/51); *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14) (5/29/53); *IP* 2, *147/2 (Anno 1145-51).

[11] *PL*, Lucius II, no. 40 (5/15/44); *IP* 1, 80/6 (5/24/47); *IP* 4, 71/28 (11/27/47); *IP* 1, 51/6 (8/30/48).

	Bernard, C-B of S. Rufina/Porto (1158-76), C-P of S. Clemente (1145-58)	5[1]	2[2]	0	7
	Hubald, Pope Lucius III, C-B of Ostia (1158-81), C-P of S. Prassede (1141-58), C-D of S. Adriano (1138-41)	4[3]	18[4]	0	22
	Guido(2), C-P of S. Crisogono (1139?-57)	4[5]	16[6]	2[7]	20
	Julius, C-B of Palestrina (1158-64), C-P of S. Marcello (1144-58)	4[8]	5[9]	0	9
	Gregory(2), C-B of Sabina (1154), C-D of S. Angelo (1137-54)	4[10]	2[11]	0	6

[1] *PL*, Eugene III, no. 577 (4/10/53); *LC*, 382-83, no. 92 (Theiner 1, 14-15, no. 18; *Antiquitates* 3, 777-78; *IP* 1, 187/5) (12/10/51); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53); *LC*, 383, no. 93 (*Antiquitates* 3, 779; *IP* 1, 192/2) (12/29/52); *PL*, Eugene III, no. 568 (2/8/53).

[2] PUS2, no. 52 (5/19/45-46); *IP* 1, 51/7 (10/1/51).

[3] *IP* 7/1, *288/1 (Anno 1144); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53); *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14) (5/29/53); *LC*, 383-84, no. 94 (Theiner 1, 14, no. 17; *IP* 2, 207/3) (Anno 1153).

[4] *APRI* 2, no. 379 (JL, 8571)? (4/14/44); *APRI* 2, no. 380 (JL, 8632) (5/27/44); *IP* 6/1, 267/16 (7/8/44); *IP* 6/1, 79/24 (August 1144); *IP* 6/1, 80/25 (August 1144); *IP* 6/2, 18/4 (August 1144); *APRI* 2, no. 382 (JL, 8654) (10/6/44); *APRI* 2, no. 383 (JL, 8659) (10/27/44); *IP* 6/1, *80/26 (September-October 1144); *APRI* 2, no. 384 (JL, 8660), (10/27/44); *IP* 6/1, 79/21 (Anno 1144); *IP* 6/1, *79/22 (Anno 1144); *IP* 6/1, *79/23 (Anno 1144) (see, *IP* 6/1, 76-81); JL, 8905 (*laudatum* in *APRI* 3, no. 74 [JL, 8906]) (4/16/46); *IP* 5, *476/20 (Anno 1146); *IP* 7/1, *273/2 (ca. 1146); *IP* 6/2, 119/6 (3/8/47); Nachträge zu den PU in Italiens 5, no. 9 (*IP* 5, 464/20) (3/10/46). See also, concerning the titular church of S. Prassede, *IP* 1, *51/4 (Anno 1143-44); *IP* 1, *51/5 (Anno 1144-45); *IP* 1, 51/6 (8/30/48); *IP* 1, 51/7 (10/1/51); *IP* 1, *51/8 (Anno 1145-53).

[5] *IP* 5, *380/5 (Anno 1144); *IP* 5, *380/6 (Anno 1144); *IP* 7/1, *288/1 (Anno 1144); *PL*, Eugene III, no. 204 (7/15/47).

[6] *APRI* 2, no. 379 (JL, 8571) (4/14/44)?; *APRI* 2, no. 380 (JL, 8632) (5/27/44)?; *IP* 6/1, 267/16 (7/8/44); *IP* 6/1, 79/24 (August 1144); *IP* 6/1, 80/25 (August 1144); *IP* 6/2, 18/4 (August 1144); *APRI* 2, no. 382 (JL, 8654) (10/6/44); *APRI* 2, no. 383 (JL, 8659) (10/27/44); *APRI* 2, no. 384 (JL, 8660) (10/27/44)?; *IP* 6/1, *80/26 (September-October 1144); *IP* 6/1, *79/22 (Anno 1144); *IP* 6/1, *79/23 (Anno 1144) (see, *IP* 6/1, 76-81); Nachträge zu den PU in Italiens 5, no. 9 (*IP* 5, 464/20) (3/10/46); JL, 8905 (*laudatum* in *APRI* 3, no. 74 [JL, 8906]) (4/16/46); *IP* 5, *476/20 (Anno 1146); *IP* 7/1, *273/2 (ca. 1146).

[7] *IP* 5, *380/5 (Anno 1144); *IP* 5, *380/6 (Anno 1144).

[8] *IP* 4, 46/2 (Mansi 21, 695; *Antiquitates* 4, 141 n.) (Anno 1145); PU in Campanien, no. 10 (*IP* 2, 147/4) (7/23/51); *IP* 2, *147/3 (Anno 1145-51); *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14) (5/29/53).

[9] Römische Analekten, 35-36, no. 3 (*IP* 1, 77/20) (6/4/45); PUF5, no. 76 (4/5/48); *EPRI*, no. 202 (JL, 9237) (4/12/48); *EPRI*, no. 202/JL, 9238 (*laudatum* at the end of *EPRI*, no. 202) (4/12/48); *IP* 1, 51/7 (10/1/51).

[10] *PL*, Eugene III, no. 297 (4/29/48)?; *PL*, Eugene III, no. 298 (4/29/48)?; *PL*, Eugene III, no. 568 (2/8/53); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53).

[11] Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 369-70, no. 941 (JL, 9393) (6/1/50); *IP* 1, 51/7 (10/1/51).

	Guido(3) Moricot de Vico, C-D of SS. Cosma e Damiano (1132-49), Chancellor	3[12]	12[13]	0	15
	Octavian, Antipope Victor IV, C-P of S. Cecilia (1151-59), C-D of S. Nicolao in carcere Tulliano (1138-51)	3[3]	3[4]	0	6
	Roland, Pope Alexander III, C-P of S. Marco (1151-59), C-D of SS. Cosma e Damiano (1150-51), Chancellor	3[5]	2[6]	0	5
	Theodwin, C-B of S. Rufina/Porto (1134-51)	3[7]	1[8]	1[9]	4
	Guido(6), cardinal(-deacon) of unknown title (1140-47?)	3[10]	0	2[11]	3
	Guido de Summa, C-B of Ostia (1149-51), C-P of S. Lorenzo in Damaso (1143-49)	2[12]	21[13]	0	23

[1] *IP* 6/1, *276/7 (Anno 1143-44); *IP* 5, *276/8 (Anno 1144-45); *PL*, Lucius II, no. 26 (5/1/44).
[2] *PL*, Celestine II, no. 44 (2/27/44); *APRI* 3, no. 55 (JL, 8516) (3/8/44); PUP, no. 44 (5/5/44); *PL*, Lucius II, no. 40 (5/15/44); *IP* 6/1, *288/9 (Anno 1143-44); PUP, no. 45 (May 1144)?; *APRI* 1, no. 204 (JL, 8919) (5/13/46); PUS2, no. 52 (5/19/45-46); *IP* 6/2, *365/1 (Anno 1145-46); *IP* 6/2, 119/6 (3/8/47); PUP, no. 46 (4/9/48); *PL*, Eugene III, no. 342 (3/17/49).
[3] *IP* 8, *44/166 (Early 1144); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53); *PL*, Eugene III, no. 504 (5/16/52)?.
[4] *PL*, Lucius II, no. 40 (5/15/44); PUS2, no. 52 (5/19/45-46); *IP* 5, *153/2 (Anno 1152)?.
[5] Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53); *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, no. 241/14) (5/29/53); *LC*, 383-84, no. 94 (Theiner 1, 14, no. 17; *IP* 2, 207/3) (Anno 1153).
[6] *IP* 1, 51/7 (10/1/51); *IP* 6/1, 188/1 (2/21/53). See also, *PL*, Eugene III, no. 542 (Anno 1145-53), to the archpriest of S. Marco.
[7] *PL*, Eugene III, no. 93 (*Bambergensia*, no. 35; JL, 8882) (3/14/46); *PL*, Eugene III, no. 204 (7/15/47); JL, 9208 (3/29/48).
[8] *PL*, Celestine II, no. 25 (1/2/44).
[9] JL, 9208 (3/29/48).
[10] *LC*, 403-04, no. 124 (*Antiquitates* 4, 241-42; *IP* 3, 482/1) (3/18/44); *PL*, Eugene III, no. 118 (6/2/46); *PL*, Eugene III, no. 119 (6/2/46).
[11] *PL*, Eugene III, no. 118 (6/2/46); *PL*, Eugene III, no. 119 (6/2/46).
[12] *IP* 6/2, *215/10 (Late 1150); Nachträge zu den PU in Italiens 5, no. 10 (*IP* 5, 477/26) (Anno 1151).
[13] *PL*, Lucius II, no. 40 (5/15/44); *PL*, Lucius II, no. 61 (7/10/44); *IP* 2, *158/11 (Anno 1143-44); *IP* 3, *411/7 (Anno 1144); *PL*, Eugene III, no. 35 (6/23/45); *APRI* 1, no. 204 (JL, 8919) (5/13/46); *IP* 6/2, *365/1 (Anno 1145-46); *IP* 6/2, 119/6 (3/8/47); *IP* 6/1, 268/20 (10/12/48); *IP* 6/1, *268/19 (Anno 1148); *APRI* 3, no. 94 (JL, 9478) (5/10/49); *APRI* 3, no. 96 (JL, 9479) (5/10/49); *IP* 5, *62/212 (Anno 1149-50); *IP* 6/1, *339/1 (Early 1151); *IP* 6/1, *361/22 (Early 1151); *IP* 6/1, *393/7 (Early 1151); *IP* 6/1, 381/32 (Early 1151); *IP* 6/2, *63/7 (Anno 1150-51); *IP* 6/1, *60/168 (Anno 1150-51); *IP* 6/1, 60/169 (Anno 1150-51); PU in Pisa, no. 4 (*IP* 5, 62/213) (6/2/52).

	Aribert, C-P of S. Anastasia (1143-56)	2[14]	6[15]	0	8
	Gregory, C-D of SS. Sergio e Bacco (1123-45)	2[3]	4[4]	0	6
	Thomas, C-P of S. Vitale (1141-46)	2[5]	4[6]	1[7]	6
	Goizo, C-P of S. Cecilia (1140-44)	2[8]	3[9]	0	5
	Hugh, C-B of Ostia (1152-58)	2[10]	3[11]	0	5
	Gregory(3), C-B of Sabina (1154-62), C-P of S. Maria in Trastevere (1140-1154)	2[12]	2[13]	0	4
	Hugh(2), C-P of S. Lorenzo in Lucina (1144-50), C-D of S. Lucia in Orphea (1143-44)	1[14]	4[15]	0	5
	Gilbert, C-P of S. Marco (1143-50), C-D of S. Adriano (1142-43)	1[16]	3[17]	0	4
	Jacinth, Pope Celestine III, C-D of S. Maria in Cosmedin (1144-91)	1[18]	3[19]	0	4

[1] *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14) (5/29/53); PU in Turin, no. 13 (*IP* 6/2, 174/14) (5/2/53).
[2] Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4) (6/27/45); *PL*, Eugene III, no. 43 (10/28/45); *IP* 6/1, *325/10 (Anno 1145)); Nachträge zu den PU in Italiens 5, no. 9 (*IP* 5, 464/20) (3/10/46); *IP* 7/1, *239/23 (8/20/48); *IP* 1, 51/7 (10/1/51).
[3] *IP* 6/1, *276/7 (Anno 1143-44); *IP* 5, *276/8 (Anno 1144-45).
[4] *APRI* 3, no. 55 (JL, 8516); (3/8/44); *PL*, Lucius II, no. 40 (5/15/44); *IP* 2, *158/11 (Anno 1143-44); *IP* 6/1, *288/9 (Anno 1143-44).
[5] *PL*, Eugene III, no. 93 (*Bambergensia*, no. 35; JL, 8882) (3/14/46); JL, 8924 (*PL*, Eugene III, no. 113) (5/24/46).
[6] *PL*, Lucius II, no. 40 (5/15/44); *PL*, Eugene III, no. 280 (4/5/48); *PL*, Eugene III, no. 335 (1/1/49)?; *PL*, Eugene III, no. 476, (January 1152).
[7] JL, 8924 (*PL*, Eugene III, no. 113) (5/24/46).
[8] *IP* 6/1, *276/7 (Anno 1143-44); *IP* 5, *276/8 (Anno 1144-45).
[9] *APRI* 3, no. 55 (JL, 8516); (3/8/44); *IP* 6/1, P. *288/9 (Anno 1143-44); *IP* 6/1, 78/17 (Anno 1143-44).
[10] PUE3, no. 82 (Anno 1151-52); *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14) (5/29/53).
[11] PUF3, no. 32 (2/18-3/21 1153); PUF4, no. 63 (JL, 9378) (3/21/53); PUF3, no. 33 (3/21/53).
[12] Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53); *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14) (5/29/53) (title of S. Calisto)?.
[13] *PL*, Lucius II, no. 40 (5/15/44); *IP* 1, 80/6 (5/24/47) (title of S. Calisto)?.
[14] *IP* 5, 344/36 (ca. 1144).
[15] *IP* 6/2, *14/27 (Early 1146); PU in Piemont, no. 4 (*IP* 6/2, 14/28) (4/17/46); *IP* 6/2, 19/9 (8/16/46); *IP* 6/2, 119/6 (3/8/47).
[16] *IP* 4, *112/1 (Anno 1143-44).
[17] *PL*, Lucius II, no. 40 (5/15/44); *IP* 6/2, 119/6 (3/8/47); PUF1, no. 55 (2/27/48). See also, *IP* 1, *100/4 (Anno 1143-44), concerning the titular church of S. Marco; and, *PL*, Eugene III, no. 542 (Anno 1145-53), to the archpriest of S. Marco.
[18] *PL*, Eugene III, no. 363 (10/25/49).
[19] *EPRI*, no. 202 (JL, 9237) (4/12/48); *EPRI*, no. 202/JL, 9238 (*laudatum* at the end of *EPRI*, no. 202) (4/12/48); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 369-70, no. 941 (JL, 9393) (6/1/50).

	Jordan, C-P of S. Susanna (1145-54), cardinal of unknown title (1144-45), Chamberlain	1[1]	3[2]	0	4
	John(2), C-P of S. Anastasia (1158-83), C-D of SS. Sergio e Bacco (1150-58)	1[3]	2[4]	0	3
	Hubald(2), C-P of S. Croce in Gerusalemme (1144-70)	1[5]	2[6]	0	3
	Ildebrand, C-P of SS. XII Apostoli (1156-78), C-D of S. Eustachio (1152-57)	1[7]	1[8]	0	2
	Odo, C-D of S. Giorgio in Velabro (1132-62)	1[9]	1[10]	0	2
	Bernard(2), C-D of SS. Cosma e Damiano (1152-53)	1[11]	0	0	1
	Gerard(2), C-D of S. Maria in Via lata (1152-55)	1[12]	0	0	1
	Odo(2), C-D of S. Nicolao in carcere Tulliano (1152-74)	1[13]	0	0	1
	Peter(2), C-D of S. Maria in Via lata (1145-48?)	1[14]	0	0	1
Total:	33	89	145	8	234
'Cardinals'—Broadly:[15]		9[16]	2[17]	1[18]	11[19]

[1] *APRI* 1, no. 227 (JL, 9672) (12/19/52-6/29/53).
[2] *IP* 6/2, 119/6 (3/8/47); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 369-70, no. 941 (JL, 9393) (6/1/50); *IP* 6/2, *382/2 (Anno 1146-53)?.
[3] *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14) (5/29/53).
[4] *IP* 1, 51/7 (10/1/51); *IP* 6/1, 188/1 (2/21/53).
[5] *IP* 2, 171/1 (8/3/52).
[6] PUS2, no. 52 (5/19/45-46); *IP* 4, 71/28 (11/27/47). See also, *IP* 1, 51/7 (10/1/51), concerning the titular church of S. Croce in Gerusalemme.
[7] Kanonistische Ergänzungen zur *Italia Pontificia*, no. 66 (*IP* 5, 236/11) (Anno 1153).
[8] *IP* 5, 315/3 (Anno 1151?). As B. Zenker, *Mitglieder*, 107-09, 176, placed his promotion to the cardinalate at 1152, P. Kehr's dating in *IP* 5, 315/3 must have been erroneous.
[9] *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14) (5/29/53).
[10] *PL*, Lucius II, no. 40 (5/15/44).
[11] *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14) (5/29/53).
[12] *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14) (5/29/53).
[13] PU in Turin, no. 13 (*IP* 6/2, 174/14) (5/2/53).
[14] *IP* 9, 77/1 (December 1148).
[15] That is, an unspecified or vague reference to a 'cardinal.'
[16] Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465) (12/29/43); *PL*, Eugene III, no. 1 (3/2/45); *IP* 6/2, 23/9 (6/17/48) ('sixteen cardinals'); *IP* 6/2, *192/6 (7/7/48); Wibald, no. 347 (*Constitutiones*, 188-89, no. 134; *IP* 1, 180/9); *PL*, Eugene III, no. 316 (8/24/48); *PL*, Eugene III, no. 583 (*IP* 3, 251/1; JL, 9726/9727) (6/3/53); *IP* 2, 158/13 (7/28/52); *IP* 2, *169/5 (10/27/51).
[17] *PL*, Eugene III, no. 311 (7/15/48); *PL*, Eugene III, no. 458 (JL, 9536, for the date) (1/20/52).
[18] *PL*, Eugene III, no. 1 (3/2/45).
[19] See also, *HP*, 80-82 (*IP* 8, *46/175; *IP* 9, *172/1).

Unidentified Cardinals:		4[1]	10[2]	1[3]	14
Former Cardinal:	Haimeric (1123-41) and the C-D's of S. Maria nuova[4]	3[5]	0	3[6]	3
	Divizo, C-P (ante 1130?)	1[7]	0	1[8]	1

For the remaining cardinals in the period 1143-53 identified in the papal letters of the same period:

Number of Papal Letters:		Concerning Clerical *Controversiae*:	Total:
Cardinal:	Guido(5) Puella, C-P of S. Pudentiana (1145-57)	7[9]	7
	John, C-D of S. Maria nuova (1143-52)	6[10]	6
	John(3) Paparo, C-P of S. Lorenzo in Damaso (1151-54), C-D of S. Adriano (1143-51)	2[11]	2
	Nicholas Breakspeare, Pope Adrian IV, C-B of Albano (1149-54)	2[12]	2
	Astaldus, C-P of SS. Prisca ed Aquila (1151-61), C-D of S. Eustachio (1143-51)	1[13]	1
	Cencius, C-B of S. Rufina/Porto (1154-57), C-P of S. Lorenzo in Lucina (1152-54), C-D of S. Maria in Aquiro (1151-52)	1[14]	1

[1] *PL*, Lucius II, no. 95 (Anno 1144-45) (Cardinal-priest); *PL*, Eugene III, no. 147 (Anno 1145-47) (Cardinal I.); *PL*, Eugene III, no. 148 (Anno 1145-47) (Cardinal I.); *IP* 4, *150/9 (Anno 1145-50) (Cardinal Hubald).
[2] *Decretales*, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506) (7/27/50-52) (Cardinal-priest G.); *PL*, Lucius II, no. 61 (7/10/44) (Cardinal-deacon G.); *IP* 6/2, *382/2 (Anno 1146-53) (Cardinal-deacon G.); *IP* 7/2, *108/3 (12/9/46) (Cardinal Guido); *IP* 7/1, *239/23 (8/20/48) (Cardinal Guido); *IP* 5, *278/5 (Anno 1145-49) (Cardinal Guido); *IP* 6/2, *382/2 (Anno 1146-53) (Cardinal-priest Hubald); *IP* 5, 278/7 (11/7/49) (Cardinal Hubald); *IP* 8, *96/2 (Ante 4/6/53) (Cardinal Leo); *PL*, Eugene III, no. 450 (6/6/51) (Cardinal-priest, 'at the time legate of the apostolic see' in Spain).
[3] *PL*, Lucius II, no. 95 (Anno 1144-45) (Cardinal-priest).
[4] B. Zenker, *Mitglieder*, 142-44.
[5] *PL*, Celestine II, no. 27 (JL, 8480) (1/10/44); JL, 8713 (2/14/45); *PL*, Eugene III, no. 7 (JL, 8729) (4/5/45).
[6] *PL*, Celestine II, no. 27 (JL, 8480) (1/10/44); JL, 8713 (2/14/45); *PL*, Eugene III, no. 7 (JL, 8729) (4/5/45).
[7] JL, 9208 (3/29/48).
[8] JL, 9208 (3/29/48).
[9] *PL*, Eugene III, no. 38 (9/12/45); *PL*, Eugene III, no. 39 (9/13/45); *IP* 7/1, 236/14 (1/2/46); *PL*, Eugene III, no. 123 (7/19/46); *PL*, Eugene III, no. 125 (7/19/46); *Antiquitates* 3, 1167 (*IP* 3, 326/32) (10/15/51); *IP* 3, *284/19 (Anno 1151).
[10] Nachträge zu den PU in Italiens 5, no. 9 (*IP* 5, 464/20) (3/10/46); *APRI* 1, no. 204 (JL, 8919) (5/13/46); PUS2, no. 52 (5/19/45-46); *IP* 6/2, *365/1 (Anno 1145-46); *IP* 1, 51/7 (10/1/51); *PL*, Eugene III, no. 462 (8/21/1150-52). See, *PL*, Celestine II, no. 27 (JL, 8480) (1/10/44); JL, 8713 (2/14/45); *PL*, Eugene III, no. 7 (JL, 8729) (4/5/45).
[11] PUF1, no. 55 (2/27/48); PUF5, no. 76 (4/5/48).
[12] Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 369-70, no. 941 (JL, 9393) (6/1/50); PU in Ligurien, no. 1 (*IP* 6/2, 382/1) (3/30/52).
[13] *IP* 1, 80/6 (5/24/47).
[14] *IP* 6/1, 188/1 (2/21/53).

	Gerard, C-P of S. Stefano in Celio monte (1151-58)	1[1]	1
	Hubald(3), C-P of SS. Giovanni e Paolo (1141-49)	1[2]	1
	John(4), C-P of SS. Giovanni e Paolo (1151-80)	1[3]	1
	Peter, C-P of S. Pudentiana (1140-44)	1[4]	1
	Robert Pullen, C-P of Martino e Silvestro (1144-46), Chancellor	1[5]	1
Total:[6]	11	24	24
Former Cardinal:	Hubert, C-P of S. Clemente (1126-33)[7]	2[8]	2
	John, C-P of S. Crisogono (1116-1134?)[9]	2[10]	2

[1] *Antiquitates* 3, 1167 (*IP* 3, 326/32) (10/15/51).
[2] *IP* 6/1, *325/12 (9/25/48)?.
[3] *IP* 6/1, 188/1 (2/21/53).
[4] *PL*, Lucius II, no. 40 (5/15/44).
[5] PUE3, no. 48 (Anno 1145).
[6] See also, *PL*, Eugene III, no. 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2) (Anno 1145-53), a decretal letter addressed to the judges Arditio, a subdeacon of the holy Roman Church, and *Magister* Omnebene; Glanfeuil Forgeries, Appendix, 249, no. 9-9c (*Annales Casinenses*, 310; *IP* 8, *179/254) (Anno 1147), 251, no. 10 (*IP* 8, 180/257) (8/5/49), concerning another Roman subdeacon and monk of Montecassino, Simon, sent, perhaps twice, to arrange the election of an abbot in Glanfeuil and enforce its subjection to Montecassino (see, H. Bloch, *Glanfeuil Forgeries*, 174-213); *PL*, Eugene III, no. 231 (10/11/47), wherein Eugene ordered the bishop of Olomouc 'through apostolic writings and our esteemed son John, subdeacon of the holy Roman Church,' to attend the upcoming Church council, held ultimately at Reims. 'Furthermore, we more attentively commend to you our forenamed son, John, asking that you diligently assist and furnish works and counsel for our same son in arranging and composing a concord between the expelled duke and his brothers, if it should prove possible;' Nachträge zu den PU in Italiens 5, no. 9 (*IP* 5, 464/20) (3/10/46), which described another subdeacon, Fr., as a member of the party of the church of Piacenza in a controversy at the curia; *PL*, Eugene III, no. 417 (Anno 1145-50), addressed to Abbot Suger requesting him to help finance the studies and absolve the debts of a Roman subdeacon, Mo. See also, the non-papal protocol of Huesca, PUS2, no. 46, where a subdeacon, *Magister* Grecus, later cardinal-deacon of SS. Sergio e Bacco in 1149, and a *Magister* John, a clerk of the papal chancellor, were claimed by visiting parties as advocates in a trial at the curia. See the note to *IP* 9, *41/102: a John, subdeacon of holy Roman Church and rector of Benevento, occurred in *chartae* of April 1152 and April 1157. Also, in September 1151 one Sofia, 'the former wife of Miccinus *de Maria Pictoina*, sells to Peter, a canon of St. Peter's, and subdeacon of the Sacred Palace, on behalf of Eugene III, all of her rights of leasing in two farms (*ius locationis in duobus casalinis*) situated in the Leonine City before the church of S. Vincenzo and before the new palace of the abovementioned pontiff.' *IP* 1, 198/5. Eugene III built one palace *apud* St. Peter's and another at Segni; see, *LP*, 383; *IP* 2, 158/13. See also, *IP* 7/2, *108/4, December 1152: 'With Henry, a subdeacon of the holy Roman Church, legate of the apostolic see, receiving in place of Ubertus, abbot of S. Benedetto Po (di Polirone), Bishop Peter of Krk concedes to the monastery of S. Cipriano, Murano the church of S. Martino with the chapel of S. Apollinare. Dedocha and Radosclavus de castro Musclo, advocates of the church of S. Martino, do likewise.' The subdeacons also, by the popes' own accounts, took part, along with the cardinals, in the elections of both Celestine II and Eugene III; see, *PL*, Celestine II, no. 2; *PL*, Eugene III, no. 1. See also, *IP* 2, 79/4 (11/23/51), *169/6 (Anno 1151), concerning the non-cardinal 'chamberlain of the lord pope,' Rainier; see also, F. Geisthardt, *Boso*, 44; I.S. Robinson, *Papacy*, 252-54.
[7] B. Zenker, *Mitglieder*, 115-16.
[8] PUP, no. 46 (4/9/48); *PL*, Eugene III, no. 342 (3/17/49).
[9] B. Zenker, *Mitglieder*, 59.
[10] Cartulaire de l'église Notre-Dame de Paris 1, 27, no. 6 (JL, 9073) (see, 28-29, no. 8) (6/5/47); *PL*, Eugene III, no. 533 (Anno 1145-53).

	Matthew, C-B of Albano (1126-35)[1]	2[2]	2
	Peter, C-P of S. Maria in Trastevere (ante 1130)	2[3]	2

For the remaining known cardinals in the period 1143-53[4] not identified in the papal letters of the same period:

Number of Papal Letters:		Total:
Cardinal:	Berard, cardinal of unknown title (1144-46)[5]	0
	Bernard(3), cardinal of unknown title (1145-52/53)[6]	0
	Bernard(4)?, Pope Eugene III, cardinal of unknown title (1140?-45)[7]	0
	Cencius(2), C-D of SS. Sergio e Bacco (1145-47/48)[8]	0
	Cencius(3), cardinal of unknown title (1144-51)[9]	0
	Gaurinus, C-B of Palestrina (1144-58?)[10]	0
	Gerard(3), Pope Lucius II, C-P of S. Croce in Gerusalemme (1123-44)[11]	0
	Gerard(4), C-D of S. Maria in Dominica (1138-44)[12]	0
	Grecus, C-D of SS. Sergio e Bacco (1149)[13]	0
	Henry, C-P of SS. Nereo ed Achilleo (1151-66)[14]	0
	Hubald(4), C-D of S. Maria in Via lata (1134-43/44)[15]	0
	John(5), C-P of SS. Martino e Silvestro (1152-64?)[16]	0
	Manfred, C-P of S. Sabina (1143-57)[17]	0

[1] B. Zenker, *Mitglieder*, 32.
[2] Cartulaire de l'église Notre-Dame de Paris 1, 27, no. 6 (JL, 9073) (see, 28-29, no. 8) (6/5/47); *PL*, Eugene III, no. 533 (Anno 1145-53).
[3] Cartulaire de l'église Notre-Dame de Paris 1, 27, no. 6 (JL, 9073) (see, 28-29, no. 8) (6/5/47); *PL*, Eugene III, no. 533 (Anno 1145-53).
[4] As identified by B. Zenker, *Mitglieder.*
[5] B. Zenker, *Mitglieder*, 184.
[6] B. Zenker, *Mitglieder*, 188.
[7] Eugene III was almost certainly not a cardinal before becoming pope; see, B. Zenker, *Mitglieder*, 184-87.
[8] B. Zenker, *Mitglieder*, 156.
[9] B. Zenker, *Mitglieder*, 188.
[10] B. Zenker, *Mitglieder*, 41-42.
[11] B. Zenker, *Mitglieder*, 129-131.
[12] B. Zenker, *Mitglieder*, 140.
[13] B. Zenker, *Mitglieder*, 156.
[14] B. Zenker, *Mitglieder*, 96-101.
[15] B. Zenker, *Mitglieder*, 178.
[16] B. Zenker, *Mitglieder*, 92-93.
[17] B. Zenker, *Mitglieder*, 94.

	Nicholas(2), C-P of S. Circiaco nelle Terme (1143-51), cardinal(-deacon) of unknown title (1142-43)[1]	0
	Peter(3), C-B of Albano (1143-45)[2]	0
	Peter(4), C-P of S. Susanna (1116-44)[3]	0
	Peter(5), C-D of S. Maria in Porticu (1139-45)[4]	0
	Peter(6), C-D of S. Maria in Aquiro (1141-44)[5]	0
	Rainald?, cardinal of unknown title (1139?-66?)[6]	0
	Rainier, C-P of SS. Prisca ed Aquila (1139-46)[7]	0
	Rainier(2), C-P of S. Stefano in Celio monte (1143-44)[8]	0
	Rodolfus, C-D of S. Lucia in Septisolio (1143-60)[9]	0
	Stephan, C-B of Palestrina (1139-44)[10]	0
	Villano Gaëtani, C-P of S. Stefano in Celio monte (1144-46)[11]	0
Total:	22-24	0

2.2 CARDINAL LEGATES:

By no later than the late 1150s a cardinal legate *a latere* was considered distinct from and superior to a 'native' or archbishop legate. To be sure, these 'native' legates continued to exist in the western Church throughout the remainder of the twelfth century, but they were far less powerful than the earlier Gregorian 'native' legates, though still considerably more powerful than the *legati nati* as they would come to be called in the thirteenth century. Accordingly, to distinguish these roles, historians have given the name 'archbishop legate' to those who served as 'native' legates in the period ca. 1130-98, when their authority was less than that of a cardinal legate *a latere* but greater than that of the later *legatus natus*. The authority of these later twelfth-century archbishop legates is seen to have been greatest in regions less visited by legates *a latere*, for instance in England, where the twelfth century kings preferred the appointment as a means of discouraging the

[1] B. Zenker, *Mitglieder*, 109, 190.
[2] B. Zenker, *Mitglieder*, 35.
[3] B. Zenker, *Mitglieder*, 103-04.
[4] B. Zenker, *Mitglieder*, 168.
[5] B. Zenker, *Mitglieder*, 177-78.
[6] This figure was almost certainly not a cardinal; see, B. Zenker, *Mitglieder*, 191-92.
[7] B. Zenker, *Mitglieder*, 95.
[8] B. Zenker, *Mitglieder*, 134.
[9] B. Zenker, *Mitglieder*, 141.
[10] B. Zenker, *Mitglieder*, 40-41.
[11] B. Zenker, *Mitglieder*, 134-35.

sending of legates *a latere*.[1] Similarly, while in the papal letters of the period 1143-53 reference to archbishop 'legates' was relatively rare, when they did appear they typically did so with reference to representatives in far away England and Spain. Thus, Archbishop Theobald of Canterbury was referred to as a current papal 'legate' in at least seven letters between late 1150 and 1152 all concerning clerical *controversiae*: five of these letters also concerned provincial judges delegate;[2] and three concerned Theobald himself directly as a judge delegate.[3] Archbishop Bernard of Tarragona was similarly referred to as a current papal 'legate' in at least seven letters between mid-1151 and mid-1153: two of these concerned Bernard directly as a judge delegate;[4] and only one did not concern a clerical controversy.[5] Otherwise, the former cardinal and Cistercian Archbishop Baldwin of Pisa[6] was referred to as a 'legate' in a single letter dated 1139-45,[7] and was alluded to as a legate in two other letters from the same period[8]—each concerned a clerical controversy though none concerned judges delegate. Baldwin's successor at Pisa, also a former cardinal, Villano Gaëtani,[9] was referred to as 'legate' in at least two letters in 1146 and 1151, neither of which concerned a clerical controversy.[10] Archbishop William II de Bénévent of Embrun was referred to as 'legate' in three letters between 1151 and 1153: two concerned William directly as a judge delegate;[11] while the third did not concern clerical *controversiae*.[12] Lastly, in two other letters, both concerning controversies, Archbishop Amadeus of Lyons was referred to as a papal 'legate' in a single letter of early 1147, perhaps as a judge delegate;[13] and Archbishop William of Auch, not as a judge delegate, in a letter of early 1151.[14] Beyond these contemporary archbishop legates, Innocent II's permanent archbishop legate to Aquitaine in the 1130s, Geoffrey II de Lèves of Chartres, was referred to in four letters in the period 1143-53 as a

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[1] See, I.S. Robinson, *Papacy*, 170-73.
[2] PUE3, no. 79 (JL, 9547) (2/6/52); PUE2, no. 64 (JL, 9433) (12/22/50); PUE2, no. 69 (JL, 9546) (2/5/52); PUE2, no. 71 (JL, 9591) (6/15/52); PUE2, no. 72 (JL, 9611) (11/3/52).
[3] PUE2, no. 64 (JL, 9433) (12/22/50); PUE2, no. 69 (JL, 9546) (2/5/52); PUE2, no. 71 (JL, 9591) (6/15/52); for the other two letters not concerning judges delegate, see, *PL*, Eugene III, no. 458 (JL, 9536, for the date) (1/20/52); PUE2, no. 65 (JL, 9428) (12/22/50).
[4] PUS2, no. 67 (6/20/53); PUS2, no. 68 (6/20/53); for the other five letters, see, *PL*, Eugene III, no. 447 (5/13/51), *PL*, Eugene III, no. 589 (6/29/53); PUS1, no. 61 (2/9/53); PUS1, no. 62 (2/9/53).
[5] PUS2, no. 66 (7/6/52).
[6] Cardinal-priest of S. Maria in Trastevere (1137-38); see, B. Zenker, *Mitglieder*, 55-56; P.B. Gams, *Series episcoporum ecclesia catholicae* (rept., Graz, 1957), listed him as a monk of Camaldoli and gave 1137 for the date of his elevation to the archbishopric of Pisa.
[7] *IP* 10, 447/1 (1139-45).
[8] *IP* 10, *439/3 (1138-45); *IP* 10, *451/2 (1138-45).
[9] Cardinal-priest of S. Stefano in Celio monte (1144-46); see, B. Zenker, *Mitglieder*, 134-35.
[10] *APRI* 3, no. 76 (*IP* 3, 325/29; *IP* 10, 383/42; JL, 8929) (5/29/46); JL, 9467 (3/30/51).
[11] PUS1, no. 59 (3/17/51); PUS1, no. 61 (2/9/53).
[12] *PL*, Eugene III, no. 527 (10/23/52).
[13] JL, 8999 (1/29/47).
[14] PUF7, Nach. Gott., no. 36 (2/20/51).

former 'legate.'[1] And another former archbishop of Pisa, Roger, was referred to as a former 'legate' in a single letter,[2] as was another former archbishop 'legate' of Innocent II, William of Arles.[3] Otherwise, the following chart refers to specific non-archbishops—that is, cardinals—referred explicitly or merely alluded to as legates outside of the papal Patrimony in the papal letters of 1143-53.

Number of Papal Letters in Which:[4]		Referred to Explicitly as 'Legate'	Referred to Explicitly as Former 'Legate'	Referred to as Being Delegated *'A Latere'*	Legation Alluded to	Former Legation Alluded to	Total
Cardinal:	Alberic, C-B of Ostia (1138-48)	10[5]	1[6]	0	0	0	11
	Aribert, C-P of S. Anastasia (1143-56)	1[7]	0	0	1[8]	0	2
	Bernard, C-P of S. Clemente (1145-58)[9]	0	0	1[10]	1[11]	0	2
	Gerard, C-P of S. Stefano in Celio monte (1151-58)	0	0	0	1[12]	0	1
	*Gilbert, C-P of S. Marco (1143-50), C-D of S. Adriano (1142-43)	0	0	0	2[13]	0	2

[1] *PL*, Lucius II, no. 40 (5/15/44); *PL*, Eugene III, no. 152 (1/3/47); Archives historiques du Poitou 3, 9, no. 7 (apparently not in JL) (Anno 1144); PUF9, no. 42 (2/28/44-45); he was also referred to as former 'legate' in at least one privilege of protection, see, *PL*, Eugene III, no. 51.

[2] Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256) (4/13/49).

[3] PUS2, no. 68 (6/20/53).

[4] See also, e.g., for references to 'legates' in the privileges of protection, five unspecified or vague references to 'legates:' *PL*, Lucius II, no. 49, 54b.; *PL*, Eugene III, no. 71, 78, 464. *PL*, Eugene III, no. 278, referred to a former cardinal-bishop of Tusculum, Aegidus; *APRI* 3, no. 101 (JL, 9476), confirmed a concord made by the cardinal-priests Guido(2), C-P of S. Crisogono (1139?-57), and Hubald, Pope Lucius III, C-B of Ostia (1158-81), C-P of S. Prassede (1141-58), C-D of S. Adriano (1138-41), 'then legates of the apostolic see.' In another privilege of protection the same legation of the same cardinal-priests was alluded to: *APRI* 3, no. 74 (JL, 8906) (see, JL, 8905), confirming with apostolic authority a sentence canonically promulgated by the cardinal-priests Guido(2) and Hubald.

[5] PUF2, no. 24 (summer 1144); PUF5, no. 59 (autumn 1144); PUF6, no. 53 (autumn 1144); PUF6, no. 54 (autumn 1144); *PL*, Lucius II, no. 68 (11/19/44); PUF9, no. 42 (2/28/44-45); PUF7, no. 56 (April 1145); PUF7, Nach. Gott., no. 28 (Anno 1144-45); PUF7, Nach. Gott., no. 29 (Anno 1144-45); PUF7, Nach. Gott., no. 30 (Anno 1144-45).

[6] *APRI* 1, no. 213 (JL, 9119) (8/16/47). For PUF7, Nach. Gott., no. 28, 29, 30, the editor, W. Wiederhold, gave the date 1138-46; these letters, however, almost certainly were written during Cardinal Alberic's French legation of ca. 1144-45.

[7] Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4) (6/27/45).

[8] *PL*, Eugene III, no. 43 (10/28/45).

[9] C-B of S. Rufina/Porto (1158-76).

[10] *PL*, Eugene III, no. 568 (2/8/53).

[11] Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53).

[12] *Antiquitates* 3, 1167 (*IP* 3, 326/32) (10/15/51).

[13] *IP* 4, *112/1 (Anno 1143-44); *IP* 4, *112/2 (Anno 1143-44): around Città di Castello, near the papal Patrimony.

	Goizo, C-P of S. Cecilia (1140-44)	1[1]	1[2]	0	0	0	2
	Gregory(2), C-D of S. Angelo (1137-54)[3]	0	0	1[4]	1[5]	0	2
	Gregory(3), C-P of S. Maria in Trastevere (1140-1154)[6]	0	0	0	1[7]	0	1
	Guido, C-B of Ostia (1149-51), C-P of S. Lorenzo in Damaso (1143-49)	6[8]	0	0	10[9]	3[10]	19
	Guido(2), C-P of S. Crisogono (1139?-57)	7[11]	0	1[12]	9[13]	1[14]	18
	*Guido(3), C-D of SS. Cosma e Damiano (1132-49)	0	5[15]	0	0	0	5

[1] *IP* 6/1, 78/17 (Anno 1143-44): this was probably a legation to Lombardy originated under Innocent II in 1143; it is uncertain if the letter occurred under Innocent II or Celestine II.
[2] *APRI* 3, no. 55 (JL, 8516) (3/8/44): referring probably to a legation to Lombardy which originated in 1143 under Innocent II.
[3] C-B of Sabina (1154).
[4] *PL*, Eugene III, no. 568 (2/8/53).
[5] Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53).
[6] C-B of Sabina (1154-62).
[7] Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53).
[8] *IP* 6/1, 268/20 (10/12/48); *APRI* 3, no. 94 (JL, 9478) (5/10/49); *APRI* 3, no. 96 (JL, 9479) (5/10/49); *IP* 6/1, 381/32 (Early 1151); *IP* 6/1, 60/169 (Anno 1150-51); Nachträge zu den PU in Italiens 5, no. 10 (*IP* 5, 477/26) (Anno 1151).
[9] PU in Pisa, no. 2 (*IP* 5, 61/204) (4/10/46); *IP* 6/1, *268/19 (Anno 1148); *IP* 6/2, *215/10 (Late 1150); *IP* 5, *62/212 (Anno 1149-50); *IP* 6/1, *339/1 (Early 1151); *IP* 6/1, *361/22 (Early 1151); *IP* 6/1, *393/7 (Early 1151); *IP* 6/2, *63/7 (Anno 1150-51); *IP* 6/1, *60/168 (Anno 1150-51); PU in Pisa, no. 4 (*IP* 5, 62/213) (6/2/52).
[10] *PL*, Lucius II, no. 61 (7/10/44); *IP* 3, *411/7 (Anno 1144); *PL*, Eugene III, no. 35 (6/23/45).
[11] *APRI* 2, no. 379 (JL, 8571) (4/14/44) (the 'legates' were not named specifically); *APRI* 2, no. 380 (JL, 8632) (5/27/44) (the 'legates' were not named specifically); *IP* 6/1, 267/16 (7/8/44); *IP* 6/2, 18/4 (August 1144); *IP* 6/1, 79/24 (August 1144); *APRI* 2, no. 383 (JL, 8659) (10/27/44); *APRI* 2, no. 384 (JL, 8660), (10/27/44) (the 'legates' were not named specifically).
[12] *PL*, Eugene III, no. 204 (7/15/47).
[13] *IP* 6/1, 80/25 (August 1144); *IP* 6/1, *80/26 (September-October 1144); *APRI* 2, no. 382 (JL, 8654) (10/6/44); *IP* 6/1, *79/22 (Anno 1144); *IP* 6/1, *79/23 (Anno 1144) (see, *IP* 6/1, 76-81); *IP* 5, *380/5 (Anno 1144); *IP* 5, *380/6 (Anno 1144); *IP* 7/1, *288/1 (Anno 1144); *IP* 5, *476/20 (Anno 1146); *IP* 7/1, *273/2 (ca. 1146).
[14] JL, 8905 (4/16/46).
[15] *PL*, Celestine II, no. 44 (2/27/44); *PL*, Lucius II, no. 26 (5/1/44) (under Innocent II); PUP, no. 44 (5/5/44) (under Innocent II); PUP, no. 46 (4/9/48); *PL*, Eugene III, no. 342 (3/17/49) (this letter did not mention the 'legates' by name, but a similar letter of a year earlier did [PUP, no. 46]): all referred to his Spanish missions undertaken under Innocent II; it is uncertain, however, if the legation concluded after Innocent's death—he was definitely back at the curia by mid-February 1144 (see, *PL*, Celestine II, no. 36).

	Guido(4), C-D of S. Maria in Porticu (1145-58)[16]	0	1[17]	0	2[18]	0	3
	Guido(5), C-P of S. Pudentiana (1145-57)	1[4]	1[5]	0	4[6]	1[7]	7
	*Guido(6), cardinal(-deacon) of unknown title (1140-47?)	0	0	0	0	2[8]	2
	Hubald, C-P of S. Prassede (1141-58)[9]	8[10]	0	0	9[11]	1[12]	18
	*Hubert, C-P of S. Clemente (1126-33)	0	2[13]	0	0	0	2
	Hugh(2), C-P of S. Lorenzo in Lucina (1144-50), C-D of S. Lucia in Orphea (1143-44)	1[14]	0	0	3[15]	0	4
	Ildebrand, C-D of S. Eustachio (1152-57)[16]	1[17]	0	0	1[18]	0	2
	Imar, C-B of Tusculum (1142-62)	8[19]	1[20]	0	0	0	9

[1] C-P of S. Maria in Trastevere (1158-64), and future Antipope Paschal III.
[2] *PL*, Eugene III, no. 376 (1/23/50).
[3] *PL*, Eugene III, no. 319 (9/13/48); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53).
[4] *IP* 7/1, 236/14 (1/2/46).
[5] *PL*, Eugene III, no. 123 (7/19/46).
[6] *PL*, Eugene III, no. 38 (9/12/45); *PL*, Eugene III, no. 39 (9/13/45).
IP 3, *284/19 (Anno 1151); *Antiquitates* 3, 1167 (*IP* 3, 326/32) (10/15/51).
[7] *PL*, Eugene III, no. 125 (7/19/46).
[8] *PL*, Eugene III, no. 118 (6/2/46); *PL*, Eugene III, no. 119 (6/2/46): referring to his legation to Moravia/Bohemia under Innocent II.
[9] C-D of S. Adriano (1138-41), C-B of Ostia (1158-81), and future Pope Lucius III.
[10] *APRI* 2, no. 379 (JL, 8571) (4/14/44) (the 'legates' were not named specifically); *APRI* 2, no. 380 (JL, 8632) (5/27/44) (the 'legates' were not named specifically); *IP* 6/1, 267/16 (7/8/44); *IP* 6/2, 18/4 (August 1144); *IP* 6/1, 79/24 (August 1144); *APRI* 2, no. 383 (JL, 8659) (10/27/44); *APRI* 2, no. 384 (JL, 8660), (10/27/44) (the 'legates' were not named specifically); *IP* 6/1, 79/21 (Anno 1144).
[11] *IP* 6/1, 80/25 (August 1144); *IP* 6/1, *80/26 (September-October 1144); *APRI* 2, no. 382 (JL, 8654) (10/6/44); *IP* 7/1, *288/1 (Anno 1144); *IP* 6/1, *79/22 (Anno 1144); *IP* 6/1, *79/23 (Anno 1144) (see, *IP* 6/1, 76-81); *IP* 5, *476/20 (Anno 1146); *IP* 7/1, *273/2 (ca. 1146); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53).
[12] JL, 8905 (4/16/46).
[13] PUP, no. 46 (4/9/48); *PL*, Eugene III, no. 342 (3/17/49) (this letter did not mention the 'legates' by name, but a similar letter of a year earlier did [PUP, no. 46])—both referred to a Spanish legation.
[14] *IP* 5, 344/36 (ca. 1144).
[15] *IP* 6/2, *14/27 (Early 1146); PU in Piemont, 4 (*IP* 6/2, 14/28) (4/17/46); *IP* 6/2, 19/9 (8/16/46).
[16] C-P of SS. XII Apostoli (1156-78).
[17] *IP* 5, 315/3 (Anno 1151?).
[18] Kanonistische Ergänzungen zur *Italia Pontificia*, no. 66 (*IP* 5, 236/11) (Anno 1153).
[19] PUF2, no. 24 (summer 1144); PUF5, no. 58 (summer 1144); *PL*, Lucius II, no. 68 (11/19/44); PUF5, no. 61 (12/5/44); PUF2, no. 27 (Anno 1144); PUE2, no. 45 (Anno 1145); *PL*, Eugene III, no. 147 (Anno 1145-47); *PL*, Eugene III, no. 148 (Anno 1145-47).
[20] PUE2, no. 52 (4/22/46).

	Jordan, C-P of S. Susanna (1145-54), cardinal of unknown title (1144-45)	1[1]	0	0	1[2]	0	2
	Julius, C-P of S. Marcello (1144-58)[3]	0	0	0	1[4]	0	1
	Nicholas, C-B of Albano (1149-54)[5]	1[6]	0	0	0	0	1
	Octavian, C-P of S. Cecilia (1151-59), C-D of S. Nicolao in carcere Tulliano (1138-51)[7]	0	0	0	3[8]	1[9]	4
	*Peter(2), C-D of S. Maria in Via lata (1145-48?)	0	0	0	1[10]	0	1
	Roland, C-P of S. Marco (1151-59), C-D of SS. Cosma e Damiano (1150-51)[11]	0	0	0	1[12]	0	1
	Theodwin, C-B of S. Rufina/Porto (1134-51)	1[13]	0	1[14]	0	1[15]	3
	Thomas, C-P of S. Vitale (1141-46)	0	4[16]	0	0	2[17]	6
Total:	27	47	16	4	52	12	131

[1] *APRI* 1, no. 227 (JL, 9672) (12/19/52-6/29/53).
[2] *IP* 6/2, *382/2 (Anno 1146-53).
[3] C-B of Palestrina (1158-64).
[4] *IP* 4, 46/2 (Mansi 21, 695; *Antiquitates* 4, 141 n.) (Anno 1145).
[5] Future Pope Adrian IV.
[6] PU in Ligurien, no. 1 (*IP* 6/2, 382/1) (3/30/52).
[7] Future Antipope Victor IV.
[8] *IP* 8, *44/166 (Early 1144); *IP* 5, *153/2 (Anno 1152); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53).
[9] *PL*, Eugene III, no. 504 (5/16/52).
[10] *IP* 9, 77/1 (December 1148): appeared as rector of Benevento.
[11] Future Pope Alexander III.
[12] Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53).
[13] JL, 9208 (3/29/48).
[14] *PL*, Eugene III, no. 204 (7/15/47).
[15] *PL*, Eugene III, no. 93 (*Bambergensia*, no. 35; JL, 8882) (3/14/46)—appeared as a former delegate *a latere*.
[16] JL, 8924 (*PL*, Eugene III, no. 113) (5/24/46); *PL*, Eugene III, no. 280 (4/5/48); *PL*, Eugene III, no. 281 (4/5/48); *PL*, Eugene III, no. 476 (January 1152).
[17] *PL*, Eugene III, no. 93 (*Bambergensia*, no. 35; JL, 8882) (3/14/46)—appeared as a former delegate *a latere*; *PL*, Eugene III, no. 335 (1/1/49).

Unidentified Cardinals:		0	0	0	9[18]	0	9
'Legates'—Broadly[2]		10[3]	5[4]	0	0	0	15
Other:	Subdeacon Arditio	0	0	0	1[5]	0	1
	Subdeacon Henry	0	0	0	1[6]	0	1
	Subdeacon John	0	0	0	1[7]	0	1
	Subdeacon Simon	0	0	0	2[8]	0	2
Total:		57	21	4	66	12	160

2.3 BRIEF BIOGRAPHIES OF THE CARDINALS:

For the known cardinals—according to B. Zenker[9]—under Celestine II, Lucius II, and Eugene III not identified in the papal letters of the same period,[10] six appear to have left the cardinalate in the

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[1] C-D G.: *PL*, Celestine II, no. 31 (P. Classen, *Gerhoh von Reichersberg*, 341-42, no. 31; JL, 8484) (1/27/44); *PL*, Lucius II, no. 61 (7/10/44); *IP* 6/2, *382/2 (Anno 1146-53). C-P G.: *Decretales*, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506) (7/27/50-52). Cardinal Guido: *IP* 7/2, *108/3 (12/9/46); *IP* 5, *278/5 (Anno 1145-49). Cardinal Hubald: *IP* 5, 278/7 (11/7/49); *IP* 4, *150/9 (Anno 1145-50). C-P Hubald: *IP* 6/2, *382/2 (Anno 1146-53).

[2] That is, an unnamed but explicit reference to a papal 'legate' or 'legates.'

[3] *PL*, Lucius II, no. 39 (5/14/44); *PL*, Lucius II, no. 79 (12/27/44); *PL*, Eugene III, no. 395 (June 1150); *PL*, Eugene III, no. 504 (5/17/52); *APRI* 2, no. 379 (JL, 8571) (4/14/44) [these would be Guido(2), C-P of S. Crisogono (1139?-57), and Hubald, Pope Lucius III, C-B of Ostia (1158-81), C-P of S. Prassede (1141-58), C-D of S. Adriano (1138-41)]; *APRI* 2, no. 380 (JL, 8632) (5/27/44) [though not named, these were Guido(2), C-P of S. Crisogono (1139?-57), and Hubald, Pope Lucius III, C-B of Ostia (1158-81), C-P of S. Prassede (1141-58), C-D of S. Adriano (1138-41)]; *APRI* 2, no. 384 (JL, 8660) (10/27/44) [though not named, these were Guido(2), C-P of S. Crisogono (1139?-57), and Hubald, Pope Lucius III, C-B of Ostia (1158-81), C-P of S. Prassede (1141-58), C-D of S. Adriano (1138-41)]; Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45) (3/23/53); Wibald, no. 17 (JL, 8461) (12/27/43); PUF7, Nach. Gott., no. 36 (2/20/51).

[4] *PL*, Lucius II, no. 40 (5/15/44); *PL*, Lucius II, no. 41 (2/24/44); *PL*, Lucius II, no. 43 (2/27/44); *PL*, Eugene III, no. 152 (1/3/47); *PL*, Eugene III, no. 450 (6/6/51).

[5] *PL*, Eugene III, no. 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2) (Anno 1145-53).

[6] *IP* 7/2, *108/4 (December 1152): 'With Henry, a subdeacon of the holy Roman Church, legate of the apostolic see, receiving in place of Ubertus, abbot of S. Benedetto Po (di Polirone), Bishop Peter of Krk concedes to the monastery of S. Cipriano, Murano the church of S. Martino with the chapel of S. Apollinare. Dedocha and Radosclavus de castro Musclo, advocates of the church of S. Martino, do likewise.'

[7] *PL*, Eugene III, no. 231 (10/11/47); see also, the note to *IP* 9, *41/102: a John, subdeacon of holy Roman Church and rector of Benevento, occurred in *chartae* of April 1152 and April 1157.

[8] Glanfeuil Forgeries, Appendix, 249, no. 9-9c (*Annales Casinenses*, 310; *IP* 8, *179/254) (Anno 1147), 251, no. 10 (*IP* 8, 180/257) (8/5/49).

[9] The following citations for the biographical information on the respective cardinals should be considered in addition to the papal letters cited above.

[10] Two additional figures, beyond those noted below, have at one time or another been purported to have been cardinals of unknown titles, but almost certainly were not: a Bernard(4), thought by some to have been the future Eugene III, (1140?-45), and a Rainald (1139?-66?); see, B. Zenker, *Mitglieder*, 184-87, 191-92.

course of 1144: the cardinal-deacons Gerard(4) of S. Maria in Dominica (1138-44),[1] Hubald(4) of S. Maria in Via lata (1134-43/44),[2] and Peter(6) of S. Maria in Aquiro (1141-44);[3] the cardinal-priests Peter(4) of S. Susanna (1116-44)[4] and Rainier(2) of S. Stefano in Celio monte (1143-44);[5] and Cardinal-bishop Stephan of Palestrina (1139-44).[6] Cardinal-priest Gerard(3) of S. Croce in Gerusalemme (1123-44) became Lucius II in March 1144.[7] Another cardinal-deacon, Grecus of SS. Sergio e Bacco (1149), a *magister* promoted by Eugene III, was only on record for a single year—although, as a subdeacon, he had both served as a legate to Germany in 1147 and participated as an advocate in a case tried at the curia in early 1145.[8] Another cardinal-priest, John(5) de Morrone of SS. Martino e Silvestro (1152-64?), a Pisan, was promoted in 1152: he was an early supporter of the antipope in the schism of 1159, and a member of the anti-Sicilian or pro-German party along with Cardinals Octavian (Antipope Victor IV) and Guido(4) de Crema (Antipope Paschal III).[9]

For the remaining known cardinals not identified in the letters of the period 1143-53, seven sat for no more than three years during that same span: Cardinal-bishop Peter(3) of Albano (1143-45),[10] the cardinal-priest Rainier of SS. Prisca ed Aquila (1139-46),[11] the cardinal-deacons Cencius(2) of SS. Sergio e Bacco (1145-47/48)[12] and Peter(5) of S. Maria in Porticu (1139-45),[13] and a cardinal of unknown title (1144-46), Berard,[14] are all obscure. Otherwise, the cardinal-priest Villanus Gaëtani of S. Stefano in Celio monte (1144-46) became archbishop of Pisa in 1146, serving in that office as a valuable supporter of Alexander III in the course of the schism of 1159;[15] while the cardinal-priest Henry of SS. Nereo ed Achilleo (1151-66), a Pisan, ultimately enjoyed a long career in the college. Henry was originally a subdeacon of the Roman Church, in which post, according to John of Salisbury, he was ordered by Eugene III to read aloud 'in consistory' a book of one of Gilbert de la Porrée's former pupils—'which was said to contain the bishop's errors'—at a stage in the investigation into Gilbert's theology after the Council of Reims in early April 1148. Gilbert denounced the work, and the cardinals and pope supported him, so that the pope commanded it to be destroyed, whereat the subdeacon Henry 'cut it into tiny fragments and

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[1] B. Zenker, *Mitglieder*, 140.
[2] B. Zenker, *Mitglieder*, 178.
[3] B. Zenker, *Mitglieder*, 177-78.
[4] B. Zenker, *Mitglieder*, 103-04.
[5] B. Zenker, *Mitglieder*, 134.
[6] B. Zenker, *Mitglieder*, 40-41.
[7] B. Zenker, *Mitglieder*, 129-131.
[8] PUS2, no. 46; B. Zenker, *Mitglieder*, 156; I.S. Robinson, *Papacy*, 458.
[9] Otto of Freising, *Gesta*, 289-94; B. Zenker, *Mitglieder*, 92-93.
[10] B. Zenker, *Mitglieder*, 35.
[11] B. Zenker, *Mitglieder*, 95.
[12] B. Zenker, *Mitglieder*, 156.
[13] B. Zenker, *Mitglieder*, 168.
[14] B. Zenker, *Mitglieder*, 184.
[15] *APRI* 3, no. 76 (*IP* 3, 325/29; *IP* 10, 383/42; JL, 8929); B. Zenker, *Mitglieder*, 134-35.

scattered them.'[1] From that point, Henry's career apparently progressed rapidly: he subsequently become a monk at Clairvaux, where he became personally close to Bernard of Clairvaux, and then successor of Eugene III as abbot of Trefontane near Rome, all before being promoted to the cardinalate by Eugene in 1151. Afterwards, Henry played an important role in politics from the mid-1150s: he was sent along with Cardinal Jacinth of S. Maria in Cosmedin (future Pope Celestine III) by Adrian IV to Frederick I to appease the emperor in the aftermath of the affair at Besançon, as Frederick I was about to re-enter Italy with newfound and ambitious territorial designs. According to the *Gesta Frederici*, these two legates were 'men of prudence in secular matters, and much better qualified for dealing with affairs of state than those previously sent.' Henry then went again to Frederick's court with Cardinals Octavian and Guido(4) de Crema in the spring of 1159 to renew a treaty with Frederick, now with prohibitively severe papal terms in light of the developments at the imperial diet of Roncaglia—terms which Frederick angrily rejected. Cardinal Henry, unlike his two fellow legates on this occasion, was subsequently a staunch supporter of Alexander III after 1159: in 1160 Alexander chose him as part of a legation along with Cardinal Odo(2) to secure recognition for his papal candidacy in France. Nevertheless, despite his important career, having been promoted to the college in 1151, he did not appear in the papal letters of the period 1143-53.[2]

The remaining known cardinals not identified in the letters of the period 1143-53 all sat for six years or more during that same span: the cardinal-priests Nicholas(2) of S. Circiaco nelle Terme (1143-51) (cardinal-deacon of unknown title [1142-43]), promoted to the priesthood by Celestine II,[3] and Manfred of S. Sabina (1143-57), probably created by Celestine II,[4] as well as a cardinal of unknown title, Cencius(3) (1144-51), are all obscure;[5] while the cardinal-deacon Rodolfus of S. Lucia in Septisolio (1143-60), created by Celestine II and a supporter of Alexander III, is otherwise obscure.[6] Otherwise, the very religious cardinal-bishop Gaurinus of Palestrina (1144-58?), from Bologna, was ordained in the church of Bologna, then became a canon at S. Maria Rheno: he was created cardinal by Lucius II and later canonised by Alexander III. Likewise, John of Salisbury singled him out for his probity: '*Quis non stupeat episcopum Praenestinum qui scrupulum conscientiae metuens et a participatione bonorum communium* [*cardinalium*] *abstinebat*?'[7]

Five more cardinals have been identified only in letters not concerning clerical

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[1] *HP*, 21-22.
[2] Otto of Freising, *Gesta*, 194, 197-200, 254-60, 268-72, 297, 321-23; Bernard of Clairvaux, *Letters*, no. 295 (B.S. James, no. 360); B. Zenker, *Mitglieder*, 96-101; I.S. Robinson, *Papacy*, 166.
[3] B. Zenker, *Mitglieder*, 109, 190.
[4] B. Zenker, *Mitglieder*, 94.
[5] B. Zenker, *Mitglieder*, 188.
[6] B. Zenker, *Mitglieder*, 141.
[7] John of Salisbury, *Policraticus*, Bk. 6. XXIV. 624; B. Zenker, *Mitglieder*, 41-42.

controversiae. Guido(6), probably a cardinal-deacon of unknown title (1140-47?), from the region of Lucca, appeared in three letters. He was sent on an important legation to Bohemia and Moravia by Innocent II in 1142, and at Passau protected Arnold of Brescia who perhaps remained in his entourage for some considerable time.[1] The rest were cardinal-deacons, and appeared in only single letters. Peter(2) of S. Maria in Via lata (1145-48?) was created by Eugene and served as rector of the papal enclave of Benevento at least between 1147 and 1148.[2] Bernard(2), from Rennes, a monk at Clairvaux and later created cardinal of SS. Cosma e Damiano (1152-53) by Eugene, was celebrated by John of Salisbury for his integrity and austerity: '*Quis Bernardi...continentiam, contemptumque pecuniae, non miretur? Nondum natus est a quo munus acceperit. Quod tamen a communione fratrum sinceriore iure proveniebat, interdum accipere pervasus est.*'[3] Gerard(2), from the county of Namur, was a scholar at Lobbes and a canon at Lüttich; created cardinal-deacon of S. Maria in Via lata (1152-55) by Eugene, he was sent by Anastasius IV in 1154 to Germany on account of the controversy over Frederick I's interference in the succession to the see of Magdeburg, and died en route home, having been treated rudely and expelled from Germany, it was said, by the king.[4] And Odo(2), cardinal-deacon of S. Nicolao in carcere Tulliano (1152-74), a *magister* from Brescia, was a member of the pro-Sicilian party under Adrian IV: he captured and imprisoned Arnold of Brescia after the 1155 Easter interdict of Rome. And subsequently, he became an important politician and legate during the schism and under Alexander III, playing a key role in orchestrating his election: in 1160 Odo(2) went as legate with the cardinal-priest Henry of SS. Nereo ed Achilleo (1151-66) to secure recognition for Alexander's papal candidacy in France; and later in 1167-68 at King Henry II of England's request to deal with Becket matter.[5]

Furthermore, only six cardinals have been identified in letters not concerning either clerical *controversiae* or temporalities. Guido(6), as mentioned above, appeared in three total letters: none concerned clerical *controversiae*, and two concerned neither clerical controversies nor clerical temporalities. The cardinal-priest Guido(2) of S. Crisogono (1139?-57) appeared in twenty letters, the third-highest total for the cardinals in this period: sixteen concerned clerical controversies; while two concerned neither clerical controversies nor temporalities. This eminently lettered Florentine was educated probably in France, perhaps under Abelard, and has been thought to have been personally close to Abbot Wibald of Stavelot and Corvey. As a cardinal

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[1] Bernard of Clairvaux, *Letters*, no. 195, 196 (B.S. James, no. 251); B. Zenker, *Mitglieder*, 188-90; G.W. Greenaway, *Arnold of Brescia*, 89, 91, 97, 106, 120.
[2] B. Zenker, *Mitglieder*, 178-79.
[3] John of Salisbury, *Policraticus*, Bk. 6. XXIV. 624; B. Zenker, *Mitglieder*, 148-49.
[4] Otto of Freising, *Gesta*, 120-23; *HP*, 71; B. Zenker, *Mitglieder*, 179.
[5] Otto of Freising, *Gesta*, 298, 310-11, 316-17, 322-23; B. Zenker, *Mitglieder*, 171-74; G.W. Greenaway, *Arnold of Brescia*, 151; I.S. Robinson, *Papacy*, 166-67.

he was extremely busy as legate: in 1139 he used the title 'legate for Lombardy;' from 1144, primarily with Cardinal-priest Hubald of S. Prassede, he was again in Lombardy and then Verona; in 1146 he was again in northern Italy along with Cardinal Hubald; and later in 1157 he was again at Verona. He is most noteworthy as one of the papal legates, along with Cardinal-bishop Theodwin of S. Rufina/Porto, to the Second Crusade from 1147. In these roles, John of Salisbury described both legates as 'indeed good men, but by no means equal to such a great office.' Though Guido(2) lacked a mastery of French, John of Salisbury described him in more detail as *pro facultate liberalis, natura benignus, dulcis affatu, et minimum habens de fastu Romano, sed litterarum amator et scrutator librorum; tumultus oderat, collationibus delectabatur, et questiunculas dyalecticas et philosophicas saepius et libentius agitabat.* He last appeared in the letters of this period in July 1147, as he remained behind in the Levant after the aftermath of the crusade on behalf of papal interests until 1153. In 1149 he summoned a legatine council for the Church of Outremer, even suspending the bishop-elect of Tripoli for lack of attendance: the bishop later defended himself in Rome, and was confirmed in his office by the pope, who censured Guido(2) for his 'lack of discretion and moderation in presuming to harass with litigation a church already greatly harassed by the Saracens,' and ordered the legate to thereupon return home 'with all speed.' Still, his role in Outremer and the Second Crusade was significant—it is possible even that the crusade itself was considered to be under the immediate direction of the papal legates, who may have been joined by an additional two or three French bishop-legates. John of Salisbury, in fact, related that the failings of the cardinal legates managed to allow the French bishops to acquire great authority, leading to the ultimate ruin of the entire enterprise.[1]

The cardinal-bishop Imar of Tusculum (1142-62) appeared in seventeen letters: eleven concerned clerical controversies; one concerned neither clerical controversies nor temporalities. He was a former pupil of Bishop Matthew of Albano (1126-35) as a monk at St. Martin-des-Champs, Paris; he then became a monk at Cluny, then prior of Charité-sur-Loire, and abbot of Montierneuf by Poitiers. Created cardinal by Innocent II, he served an important legation to England from 1144, at a time when the two greatest native prelates of England, Theobald of Canterbury and Henry of Winchester, had gone to the curia to contest the office of permanent legate to England. Imar was apparently also instructed to investigate the claims of St. David's (Menevia) to metropolitan status over Wales and to confer the *pallium* upon William Fitzherbert, nephew of King Stephen and Henry of Winchester, elected to the archbishopric of York. Proceeding from that legation, Imar was then with the cardinal-bishop Alberic of Ostia in France

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[1] *HP*, xxix, 54-55, 62, 73-75; *IP* 5, 449/33; *IP* 3, 455/3; *IP* 5, *476/20; Wibald, no. 66; *Annales Ratisponenses*, *MGH SS* 17, 586; *Monumenta Aquicinctina: Historia monasterii*, *MGH SS* 14, 588; *Anonymi vera narratio fundationis prioratus S. Barbarae in Algia*, 502; Odo of Deuil, *De profectione* 2, 22, 24, 28, 44; B. Zenker, *Mitglieder*, 62-64; I.S. Robinson, *Papacy*, 114, 159, 357-62; Arnulf of Lisieux, *Letters*, xxv-xxvii; G. Constable, *Second Crusade*, 263-64.

into 1145. He was purported by Zenker to have been largely shut out of any important role in the curia under the successors of Eugene III, under whom he did not play an insignificant role, hence his representation in the letters of this period—Zenker supposed, in fact, that he stood personally close to Eugene on the simple basis that he was a confidant of Bernard of Clairvaux. He would, however, become an early supporter and consecrator of the antipope in 1159.[1]

Guido(4) de Crema, cardinal-deacon of S. Maria in Porticu (1145-58), cardinal-priest of S. Maria in Trastevere (1158-64), and later Antipope Paschal III (1164-68), appeared in ten letters: three concerned clerical controversies; and one concerned neither clerical controversies nor temporalities. A nobleman related to Kings Louis VII of France and Stephen of England, as well as Cardinal Octavian, he would be promoted to the priesthood by Adrian IV, even though he one of the original members of the pro-German or anti-Sicilian faction in the college and a key supporter of Victor IV—playing a leading role in his election—whom he succeeded. He also served several legations in the course of his pontificate, including to Poland, Germany, and northern Italy in the period 1143-53, and was a negotiator of the Treaty of Constance with Frederick I in 1153. He was also in attendance at the famous diet of Roncaglia in November 1158, then went on another mission to the emperor with Cardinals Octavian and Henry in the spring of 1159. John of Salisbury also reported that he, along with Cardinal Octavian, opposed the archbishop of Canterbury in 1148 on behalf of their kinsman, Stephen of England.[2]

The cardinal-priest Thomas of S. Vitale (1141-46) appeared in six letters: four concerned clerical controversies; and one concerned neither clerical controversies nor temporalities. This Milanese cardinal, created by Innocent II, was a *magister* and regular canon at S. Maria, Crescenzago in the diocese of Milan. He was legate between late 1145 and early 1146 along with Cardinal-bishop Theodwin to Germany, where the pair apparently recommended the canonisation of the former Emperor Henry II.[3] The same cardinal-bishop Theodwin (1134-51) appeared in only four letters: one concerned clerical controversies; and one concerned neither clerical controversies nor temporalities. This long-tenured bishop of S. Rufina/Porto was a German from Suabia; and became a monk at Gorze, prior of Maursmunster, and then abbot of Gorze. Created by Innocent II, he served, prior to the legation of 1145-46, as legate to Germany in the 1130s: his earliest legations in 1135 and 1136 were devoted to pacifying the German kingdom so as to enable Lothar III to come to Italy on Innocent's behalf. He was a personal friend of Lothar's successor King

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[1] Otto of Freising, *Gesta*, 292-94, 310, 328; Bernard of Clairvaux, *Letters*, no. 219, 230, 231, 232, 307 (B.S. James, no. 293, 219, 310, 311, 372); B. Zenker, *Mitglieder*, 44-46; I.S. Robinson, *Papacy*, 50, 160-61, 165, 219.

[2] Otto of Freising, *Gesta*, 233, 268-72, 289-99, 333-38; *HP*, 45, 97-98; B. Zenker, *Mitglieder*, 56-59, 168; I.S. Robinson, *Papacy*, x, 28, 53, 82, 115, 471-72, 479, 486-87, 491; P. Munz, *Barbarossa*, 199-200; H.K. Mann, *Lives* 9, 303; H.K. Mann, *Lives* 10, 17, 41, 69-75, 78, 80, 88-89, 95.

[3] B. Zenker, *Mitglieder*, 114.

Conrad III of Germany, whose largely illegal election he had helped orchestrate as legate, and was considered along with Lucius II the German expert at the curia, and thus a proponent of a pro-German 'policy.' He was also papal legate, along with Guido(2), to the crusading armies, in which role both suffered condemnation through the pen of John of Salisbury. But he did not die in the East, as John of Salisbury claimed, but returned to Europe, as Abbot Wibald, writing after April 1150, mentioned letters he had received from him from Sicily en route from Jerusalem.[1]

Otherwise, the remaining cardinals in the period 1143-53 all have been identified in at least one letter of the same period concerning a clerical controversy. Seven appeared in only a single letter, in total. The Roman Astaldus was created cardinal-deacon of S. Eustachio (1143-51) by Celestine II and promoted to the priesthood of SS. Prisca ed Aquila (1151-61) by Eugene III; he would support Alexander III in 1159, but otherwise is little-known.[2] Cencius was created cardinal-deacon of S. Maria in Aquiro (1151-52) by Eugene and was quickly promoted to the priesthood S. Lorenzo in Lucina (1152-54); in 1154 he would be further promoted to the bishopric of S. Rufina/Porto (1154-57). Otherwise he is little-known, although John of Salisbury described him, along with Cardinal John(3) Paparo, as the *efficacissimus institutor* to Cardinal Gregory(2) of S. Angelo in corruption and artfulness.[3] The cardinal-priest Peter (1140-44) was, like his predecessor in the title-church of S. Pudentiana, archpriest of St. Peter's, and created cardinal by Innocent II.[4] The cardinal-priest Hubald(3) of SS. Giovanni e Paolo (1141-49) was a *magister*; and while little else is known of him, although, according to B. Zenker, he may have served in some capacity as a legal advisor at the curia.[5]

The highly learned Englishman Master Robert Pullen taught for several years at Exeter—or, less probably, Oxford—especially theology, becoming archdeacon of the church of Rochester while probably teaching at Paris into the early 1140s. He was called to Rome, probably from Paris, on account of his learning by Lucius II who made him cardinal-priest of Martino e Silvestro (1144-46), the first English cardinal, and then quickly papal chancellor in January/February 1145.[6] The cardinal-priest Gerard of S. Stefano in Celio monte (1151-58), created apparently by Eugene, was legate in 1151 with Cardinal Guido(5) Puella in Siena; little else is known of him otherwise from the sources—he probably died before the schism of 1159,

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[1] *HP*, 54-55, 62; Otto of Freising, *Gesta*, 78-79, 95; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 3, col. 1616-17; *Constitutiones*, 179, no. 124; Wibald, no. 252; B. Zenker, *Mitglieder*, 26-28; I.S. Robinson, *Papacy*, 159; G. Constable, *Second Crusade*, 263-64.
[2] B. Zenker, *Mitglieder*, 95, 175.
[3] *HP*, 71; B. Zenker, *Mitglieder*, 29, 125.
[4] B. Zenker, *Mitglieder*, 112.
[5] B. Zenker, *Mitglieder*, 136.
[6] Bernard of Clairvaux, *Letters*, no. 205, 362 (B.S. James, no. 271, 316); B. Zenker, *Mitglieder*, 89-92; R.L. Poole, 'The Early Lives of Robert Pullen and Nicholas Breakspeare,' *Essays in Medieval History Presented Thomas Frederick Tout*, ed. A.G. Little and F.M. Powicke (Manchester, 1925), 61-70, here at, 61-64; F. Courtney, *Cardinal Robert Pullen.*

although his title-church would not have a successor until 1175.[1] The cardinal-priest John(4) of SS. Giovanni e Paolo (1151-80), from Sutri in the Patrimony, was well educated, though he did not show up prominently in the sources until under Adrian IV in 1155 as legate to Frederick Barbarossa; he nevertheless would have a busy, long, and important career as a supporter of Alexander III—who sent him to Outremer in 1162-64 to collect funds for his cause. Otherwise, in a document of early November 1153 he was named as papal 'rector of the Campagna,' and later as papal 'count of the Campagna.'[2]

The cardinal-bishop of Albano (1149-54), Nicholas Breakspeare, would become Adrian IV (1154-59)—the only English pope—but appeared in only two letters of this period, both concerning clerical controversies. Nicholas' background is controversial, as much because of a paucity of contemporary accounts as because of their inconsistencies and, in certain cases, outright errors. He was probably a Saxon born in the area around the Benedictine monastery of St. Albans where he may have been a postulant and where his father, a cleric, became a monk. For certain reasons—poverty and a lack of education, probably—he went to France, where he studied perhaps at Paris and, more probably, at either Arles or Avignon, eventually becoming a canon, by 1140, and soon abbot at St. Ruf near Avignon. In ca. 1148-49, as abbot, he spent considerable time in Catalonia on account of the interests of his abbey participating in or at least witnessing some of the events of the re-conquest of the territory from the Moslems. For certain reasons he was brought to the curia, from 1149, perhaps because of the dissension of his own community from his more rigorous rule. There, according to his biographer Boso, 'although he wished to return to his own, Pope Eugene...retained him with him and consecrated him as bishop of Albano from the common counsel of his brethren.' He then went on his celebrated legation to organise the Northern Church from 1152. He had only returned to Rome for a few months when, carrying the success of his northern mission, he was elected pope. A formidable politician, his pontificate would be noted for a successful continuation of Eugene III's feudal-fortress 'policy' in the Patrimony, and for overseeing a diplomatic 'policy' which would ultimately lead to an orientation away from the German king and towards the Sicilian, leading at length to the orchestration of Cardinal Roland's succession as Alexander III and a longstanding papal alliance with the Sicilian crown.[3]

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[1] B. Zenker, *Mitglieder*, 135.

[2] *IP* 2, 171/3, 159/18; Otto of Freising, *Gesta*, 297; B. Zenker, *Mitglieder*, 137-39; I.S. Robinson, *Papacy*, 167, 257, 362-63.

[3] *LP*, 388-97; Otto of Freising, *Gesta*, 142, 149-52, 180-86, 190-94, 197-200, 252-72, 282, 288-329; see, in particular, the articles in *Adrian IV, the English Pope (1154-1159): Studies and Texts*; also, B. Zenker, *Mitglieder*, 36-38; R.L. Poole, *Studies in Chronology and History*, 294; R.L. Poole, *Early Lives of Robert Pullen and Nicholas Breakspeare*, 64-68; H.K. Mann, *Lives* 9, 41, 231-340; E.M. Almidingen, *The English Pope (Adrian IV)*; I.S. Robinson, *Papacy*, 4-5, 19, 22, 25, 28, 30-31, 43, 46, 50-53, 58, 78-81, 88, 90, 93-94, 107, 115-17, 119, 147, 160-61, 164, 170-71, 176, 181-84, 195, 200, 212, 216-17, 220-23, 236, 239, 241, 246-47, 254-58, 261, 265, 273, 281, 310-12, 338, 362, 367, 389-93, 452, 462-74, 480, 490, 493-94, 496, 499, 501, 509.

The Roman John(3) Paparo similarly appeared in two total letters of this period, both concerning clerical controversies. In 1138 he was a subdeacon of the Roman Church; Celestine II then created him cardinal-deacon of S. Adriano (1143-51), and Eugene promoted him to the priesthood of S. Lorenzo in Damaso (1151-54). He is something of a known quantity, thanks to John of Salisbury, who related that he had created scandal in the curia by refusing his promotion and ordination, threatening to lead a new revolution in Rome. He was eventually pacified by the other cardinals, accepted ordination to the priesthood, and fulfilled his legation to Ireland, carrying four *pallia*, where he reorganised the churches—he apparently continued his legation in France along with the chamberlain Cardinal Jordan of S. Susanna in 1152. He was further maligned by John of Salisbury for accepting a bribe from the count of Vermandois in his divorce case before the pope in 1148. And he may have had some legal competence as he was claimed by the bishop of Roda, along with the subdeacon, and later cardinal, Grecus, as an advocate in a trial at the curia in 1145.[1]

The Bolognese Ildebrand, created cardinal-deacon of S. Eustachio (1152-57) by Eugene and promoted to the priesthood of SS. XII Apostoli (1156-78) by Adrian IV, appeared in two letters, one of which concerned a clerical controversy. He was a *magister* and canon of S. Maria Rheno, ultimately serving several legations—he was in Lombardy perhaps in 1152 and around Ferrara in 1153—and was later an important political diplomat and member of the pro-Sicilian party playing a key role in Alexander III's election and as legate on his behalf: he was papal vicar to Venice for several years at the beginning of Alexander's pontificate and then 'legate in all of Lombardy' between 1166 and 1177, except in 1175.[2] And the cardinal-deacon Odo of S. Giorgio in Velabro (1132-62), who enjoyed a long career, nevertheless also appeared in only two letters of the period 1143-53, one of which concerned a clerical controversy. From an old Roman family, he is relatively obscure: he was unimportant in the sources for the first two decades of his cardinalate, first conspicuous as a legate sent by Adrian IV to France in 1154-55; he was also a member of the pro-Sicilian party.[3]

The remaining cardinals have all been identified in at least three papal letters of the period 1143-53. The Pisan Guido de Summa, cardinal-priest of S. Lorenzo in Damaso (1143-49) and cardinal-bishop of Ostia (1149-51), appeared in twenty-three letters, twenty-one of which concerned clerical controversies. He was created cardinal-priest by Celestine II and promoted to the bishopric of Ostia by Eugene. Zenker had relatively little to say concerning him, although he has been identified in more letters of this period than any other cardinal. For his activity as cardinal-priest, Zenker noted that little is known of him other than his partisanship of Bishop

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[1] PUS2, no. 46; *HP*, 6, 12-13, 70-72; B. Zenker, *Mitglieder*, 79-82, 153.
[2] Otto of Freising, *Gesta*, 297, 311; B. Zenker, *Mitglieder*, 107-09, 176; I.S. Robinson, *Papacy*, 164.
[3] Otto of Freising, *Gesta*, 291, 298, 311; B. Zenker, *Mitglieder*, 159-60.

Henry of Winchester against Archbishop Theobald of Canterbury as standing legate to England. According to John of Salisbury, in the summer of 1148 representatives of Canterbury found the pope at Brescia, whither Eugene III had returned from France, seeking redress for the archbishop's despoliation at the hands of the English king, and 'easily obtained gratification of their wishes' from the pope, although two cardinals, Octavian and Guido(4) de Crema, both future antipopes, 'boasting that they were kinsmen of the king,' staunchly opposed them, as did Guido de Summa, 'a partisan (*favor*) of the lord of Winchester, although more moderately.' In the end, according to John of Salisbury, 'truth and apostolic faithfulness prevailed;' and the pope sent to all of the English prelates ordering them to assist the archbishop in recovering his losses and obtaining compensation, threatening interdict and excommunication upon the king's own person.

Later, John of Salisbury reported that the bishop of Winchester, probably between 1149 and 1150, set out for Rome to obtain absolution from his sentence of suspension imposed upon him by Theobald of Canterbury, and there 'intrigued (*elaborare*)' with Cardinals Guido de Summa and Gregory(2) of S. Angelo and others, 'as they afterwards confessed, so that the *pallium* might be granted to him and he might become archbishop of western England, or else so that the legation of the kingdom might be conceded to him, or at least so that his church might be exempted from the jurisdiction of Canterbury.' And though the bishop left no stone unturned, 'he was severely repulsed,' and so, 'at length, petitioned that he might be personally exempted. But to all of his pleas the lord pope turned a deaf ear, as much because he was darkly suspicious of him and attributed to him the corruption of all of England, as because he knew the justice of the church of Canterbury.'[1] After 1149 Zenker associated Cardinal Guido only with a controversy in May 1151 between the bishop and canons of S. Antonio in the archdiocese of Ravenna—the cause actually occurred in May 1149.[2] In fact, between 1149 and 1150 the cardinal was involved in a transaction between the bishop of Ferrara and archbishop of Ravenna: in total, Guido has been identified as a legate in the period 1143-53 around Lucca ca. 1143, in the Romagna in 1146, and in 1148 around Lombardy, where he served another, extended legation between 1149 and 1151.

The Luccan Cardinal Hubald Allucingoli, later Pope Lucius III (1181-85), appeared in twenty-two total letters, eighteen of which concerned clerical controversies. Created cardinal-deacon of S. Adriano (1128-41) by Honorius II, he was promoted to the priesthood of S. Prassede (1141-58) by Innocent II and to the bishopric of Ostia (1158-81) by Adrian IV. Of a middling education, he was known as austere and is thought to have been an admirer of Bernard of Clairvaux. From 1144 he was legate along with cardinal-priest Guido(2) in Lombardy and then Verona; and in 1146 he was again in northen Italy along with Guido(2). He would go on to become one of the most influential cardinals of his age, and one of the curia's most talented

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[1] *HP*, 42-51 (JL, 9287, 9288, 9289), 78-80.
[2] B. Zenker, *Mitglieder*, 20-21, 79.

diplomats: he was a negotiator of the Treaty of Constance; a member of the pro-Sicilian party in the curia, and negotiator of the Treaty of Benevento in 1156 with William I of Sicily—which formed the practical genesis of the schism of 1159. Afterwards, he was a key supporter and diplomat of Alexander III, and a negotiator of the peace of Venice, which ended the schism. He was perhaps the most important figure in the Alexandrine curia, even going as legate to Constantinople. As a war-weary pope he was not entirely conciliatory towards the emperor, although he certainly was not hostile in the manner of his successor, Urban III. He was only able to spend five months in Rome during the course of his pontificate, and is noted for the bull *Ad abolendam* against heresy. He was almost certainly never a Cistercian, though he has been claimed as such and certainly had close links with and strongly supported the order—he remained, instead, a secular clerk.[1]

The Pisan Guido(3) Moricot de Vico appeared in fifteen letters, twelve of which concerned clerical controversies. Created cardinal-deacon of SS. Cosma e Damiano (1132-49) by Innocent II, he was exalted for his integrity and served as papal chancellor from late 1146. He probably played an important role as close to Eugene III as chancellor, and has been purported to have been a member of Bernard of Clairvaux's friendship circle. He went on missions to Spain in 1134, 1135-37, and 1143; in 1135 he was also in Milan; and in 1147 he went to Germany to treat with Conrad III over the crusade. It was he, according to Abbot Wibald, who, at the end of his career, again as legate to the German court, prevailed upon the abbot to use his influence with Conrad to dissuade him from the proposed German-Greek campaign against central and southern Italy. The future chamberlain Boso was a cleric under him and would succeed him for some time in charge of the chancery.[2]

The French Alberic, cardinal-bishop of Ostia (1138-48), appeared in thirteen letters, eight of which concerned controversies. From the diocese of Beauvais, he was a Cluniac and considered learned. Like the cardinal-bishops Matthew of Albano (1126-35) and Imar of Tusculum (1142-62) he was a product of St. Martin-des-Champes, Paris, after becoming prior of which he was called to Cluny by Peter the Venerable to serve as subprior and help reorder the monastery in the aftermath of the schism of Abbot Pontius. He then became abbot of Vézélay. He was also the only cardinal

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[1] Otto of Freising, *Gesta*, 292, 297, 328; *Constitutiones*, 588-90, no. 413; *IP* 8, 48-49; Romuald of Salerno, *Chronicon*, 240-41; *Annales Ceccanenses*, 284, 287; *Annales Casinenses*, 311-12; *Life of Alexander*, 45, 95, 102, 107, 112-13, 117; John of Salisbury, *The Letters of John of Salisbury* 2, 438-47, no. 236; B. Zenker, *Mitglieder*, 22-25, 117, 153; I.S. Robinson, *Papacy*, xi, 5, 25, 43, 49, 53, 85-86, 91, 112, 118, 147, 212, 218, 222, 237, 239, 242, 248, 259, 290, 319, 364, 393-94, 471, 493, 499-503, 517-20; J.M. Brixius, *Mitglieder*, 43; V. Pfaff, 'Sieben Jahre päpstlichen Politik: Die Wirksamkeit der Päpste Lucius III., Urban III., Gregor VIII.,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 67 (1981), 148-212, here at, 173; H.K. Mann, *Lives* 10, 108, 123, 239-83, 299, 311, 366, 368.

[2] *HP*, 11; Otto of Freising, *Gesta*, 63; Wibald, no. 46, 252; Bernard of Clairvaux, *Letters*, no. 334, 367, 368 (B.S. James, no. 246, 415, 416); B. Zenker, *Mitglieder*, 146-48; I.S. Robinson, *Papacy*, 95, 159, 219, 265, 304, 456-58.

who supported Bernard of Clairvaux against Gilbert de la Porrée, according to John of Salisbury—the only cardinal, in fact, 'not wholeheartedly opposed to [Bernard] in spirit and in deed.' He was also one of the most travelled of all mid-twelfth-century legates: in 1138-39 he was legate to England and Scotland; in 1139-41 to Outremer and the principality of Antioch; and in 1144-45 in France, where he was active in the affairs of religious houses—reforming the old Benedictine abbey of Fleury (St. Benoît-sur-Loire) and securing the appointment of his nephew as its abbot. Nevertheless, he was noted for his probity as a legate.[1]

The Genoese Guido(5) Puella—'the Maiden'—or otherwise known as Guido 'Cibo' or 'Dens,' a *magister* and regular canon at S. Maria Rheno, Bologna, appeared in seven letters, all of which concerned clerical controversies. Created cardinal-priest of S. Pudentiana (1145-57) by Eugene, as general of the papal forces he would lead the siege against Rome in 1149. In 1145-46 he was legate around Verona, in 1151 in Siena, and in 1155 to the court of Frederick Barbarossa. He assisted the chamberlain Boso in the territorial 'policy' of the papacy in Tuscany after 1155; and it was he who, in 1155, was attacked by a Roman mob, perhaps followers of Arnold of Brescia, as he was travelling along the via Sacra to visit the pope in the Leonine City, thus justifying Adrian IV's decisive action against the Roman commune resulting in the Easter interdict of the City. John of Salisbury singled him out for criticism of the corruption of the cardinalate under Eugene: *Verumtamen, quia Guido Dens...populo testimonium perhibet, ei usquequaque contradicere non praesumo. Asserit enim in Romana ecclesia quandam duplicitatis esse radicem malorum omnium. Neque id quidem in angulo sed considentibus fratribus S. Eugenio praesidente, quando adversus innocentiam meam Ferentini gratis excanduerat, hoc publice protestatus est.*[2]

The cardinal-priest Aribert of S. Anastasia (1143-56) appeared in eight letters, six of which concerned clerical controversies. Created by Celestine II, his origin is unknown; although he was active in northern Italy for several years: in 1145 he was in Lombardy, where later in 1153-54 Anastasius IV and Adrian IV would maintain him as 'legate of all of Lombardy' and as 'vicar of the pope in Lombardy.'[3] The Bolognese cardinal-deacon John of S. Maria nuova (1143-52), a nephew of Lucius II but created cardinal by Celestine II, appeared in six letters, all of which concerned clerical controversies. Known for his austerity and amiability, he was created cardinal in December 1143 and was a canon at S. Frediano; he was also close to Cardinal Guido(2) and was a supporter of Abelard against Bernard of Clairvaux.[4] Julius, created cardinal-priest of S. Marcello

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[1] *HP*, 20; Bernard of Clairvaux, *Letters*, no. 219, 230, 231, 232, 241, 527 (B.S. James, no. 293, 219, 310, 311, 317, 191); B. Zenker, *Mitglieder*, 15-20; I.S. Robinson, *Papacy*, 165-66, 219, 357.

[2] John of Salisbury, *Policraticus*, Bk. 6. XXIV. 624; *HP*, 60; *LP*, 389-90; Richard of Hexham, *De gestis regis Stephani*, 167; B. Zenker, *Mitglieder*, 112; I.S. Robinson, *Papacy*, 161.

[3] B. Zenker, *Mitglieder*, 72-73; I.S. Robinson, *Papacy*, 164.

[4] *PL*, Celestine II, no. 27 (JL, 8480); Wibald, no. 66; Suger of St. Denis, *Epistolae*, *PL* 186, no. 140, col. 1414; B. Zenker, *Mitglieder*, 144-45.

(1144-58) probably by Lucius II and promoted to the bishopric of Palestrina (1158-64) by Adrian IV, appeared in nine letters, five of which concerned controversies. Of unknown origin, he was at Foligno, in Umbria, in 1145; and he would be a loyal supporter of the pro-Sicilian 'policy' and Adrian IV's territorial 'policy' generally—he was a negotiator of the Treaty of Benevento—thus perhaps contributing to his own promotion to the episcopate. He was also, naturally, a supporter of Alexander III, under whom he would serve missions to Hungary and as vicar of Rome. Zenker supposed that he stood particularly high in Eugene's favour on the basis of the *arenga* of a letter addressed to the same cardinal in June 1145 committing to him and his titular church the church and possessions of S. Maria Cannella: *Cum universis catholicae ecclsiae filiis debitores ex iniuncto nobis a Deo apostolatus officio existamus, fratribus nostris cardinalibus, qui in beati Petri servitio nobis frequenter assistunt et, ubi oportet, proprias etiam personas exponunt, propensior nos convenit caritatis studio imminere.*[1]

The long-tenured Conrad de Suburra, created cardinal-priest (1110-28) by Paschal II and promoted to the bishopric of Sabina (1128-53) by Honorius II—and successor to Eugene III as Pope Anastasius IV (1153-54)—appeared in nine letters, four of which concerned controversies. A Roman and secular cleric—P. Classen refuted the tradition linking Conrad with the canons regular of St. Ruf, Avignon—he was a staunch supporter of Innocent II during the schism of 1130, and had an active career as legate up to 1143. Extremely important in the local civic government of Rome, apparently, he was used both by Innocent II and Eugene III as 'vicar' of Rome in periods of papal exile—he was purported to have held great personal influence amongst the Romans. Zenker had little to say about his career after 1127—in 1151 he was in Todi, she noted. In fact, he was active throughout the period 1143-53. As short-lived pope, he was considered by the *Gesta Frederici* to be too complacent towards the emperor, thus fuelling Frederick I's ambitions—he ultimately acquiesced to the emperor in the controversy over the succession to the see of Magdeburg.[2]

The cardinal-deacon Gregory of SS. Sergio e Bacco (1123-45) appeared in six letters, four of which concerned controversies. A Roman, he was created cardinal together with the future chancellor Haimeric, cardinal-deacon of S. Maria nuova (1123-41), by Calixtus II and was a supporter of Innocent II; his career otherwise is obscure—he was apparently an intimate of Bernard of Clairvaux.[3] Hugh(2), from Novara, was created cardinal-deacon of S. Lucia in Orphea (1143-44) by Celestine II and quickly promoted to the priesthood of S. Lorenzo in Lucina (1144-

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[1] Römische Analekten, 35-36, no. 3 (*IP* 1, 77/20); Otto of Freising, *Gesta*, 292, 297; *Constitutiones*, 588-90, no. 413; *IP* 8, 48-49; Romuald of Salerno, *Chronicon*, 240-41; *Annales Ceccanenses*, 284; *Annales Casinenses*, 311-12; *Life of Alexander*, 52-54, 65; B. Zenker, *Mitglieder*, 42-43, 102.
[2] *LP*, 388; Otto of Freising, *Gesta*, 123; Wibald, no. 416; B. Zenker, *Mitglieder*, 46-48; P. Classen, *Anastasius IV.*, 36-63; I.S. Robinson, *Papacy*, xi, 8, 25, 43, 48, 58, 70-74, 78, 115, 147, 164, 212, 215-17, 222, 281, 363, 388-89, 453-54, 462; H.K. Mann, *Lives* 9, 17, 221-31.
[3] Bernard of Clairvaux, *Letters*, no. 333 (B.S. James, no. 245); B. Zenker, *Mitglieder*, 155-56.

50) by Lucius II: he appeared in five letters of the period 1143-53, four of which concerned controversies. While he was considered to be well educated, he is otherwise largely obscure: he was a supporter of Abelard against Bernard of Clairvaux; he was legate at Nogara ca. 1144 and at Vercelli in 1146; and acted intermittently as papal chancellor between April 1147 and May 1148 on behalf of Guido(3) Moricot, cardinal-deacon of SS. Cosma e Damiano (1132-49).[1]

Guido(4) de Crema's kinsman, Octavian Maledictus of Monticelli, the future antipope Victor IV (1159-64), appeared in six letters of the period 1143-53, three of which concerned clerical controversies. Related to numerous royal and princely houses of Europe, Octavian, from the Roman District, was a subdeacon of the Roman Church and rector of Benevento in 1137. Created cardinal-deacon of S. Nicolao in carcere Tulliano (1138-51) by Innocent II, he would be sent by Celestine II in early 1144 along with the Roman consul Cencius Frangipane to negotiate a peace with King Roger II of Sicily, and later promoted to the priesthood of S. Cecilia (1151-59) by Eugene III. Regarded in the curia as an expert on German affairs, he was sent on legation to Germany with the chamberlain Cardinal Jordan ca. 1151: John of Salisbury, who wrote after 1159, maligned both legates for their egregious corruption throughout the duration of the legation. Nevertheless, Octavian later served two other legations to the court of Frederick I: one, in the first weeks of Adrian IV's pontificate, along with Cardinal Bernard of S. Clemente; and the other in April 1159 with Guido(4) de Crema. He was a negotiator of the Treaty of Constance and would become the leader of the pro-German, anti-Sicilian 'policy' in the curia—he was accordingly regarded by his distracters as a 'lover (*cultor*) of the Germans,' especially John of Salisbury, who described him as a sycophant at the German court, and its advocate at the curia. Nevertheless, Zenker made apologies for the negative reputation he acquired both as papal legate and antipope.[2]

The French Hugh, a monk at Clairvaux and in 1147 abbot of Trois-Fontaines in the diocese of Châlons-sur-Marne, was created bishop of Ostia (1152-58) by Eugene III and appeared in five letters, three of which concerned controversies. He was considered close to Bernard of Clairvaux and a proponent of Cistercian interests at the curia—he was not noticeably active after 1153, according to Zenker.[3] Gilbert, created cardinal-deacon of S. Adriano (1142-43) by Innocent II and promoted to the priesthood of S. Marco (1143-50) by Celestine II, is mostly obscure: he appeared in four letters, three of which concerned controversies. John of Salisbury reported that Count Geoffrey of Anjou learned from this cardinal that 'kingdoms should be defended not by lawsuits but by the sword;' and between 1143 and 1144 he was apparently a legate around

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[1] Suger of St. Denis, *Epistolae*, no. 141, col. 1414-15, no. 142, col. 1415; B. Zenker, *Mitglieder*, 123-25, 182.
[2] Otto of Freising, *Gesta*, 19, 110, 149, 268-72, 282-329; *HP*, 45, 71, 75-77, 97-98; B. Zenker, *Mitglieder*, 66-70, 171; I.S. Robinson, *Papacy*, 8, 19, 28, 45, 49, 52-53, 78-83, 140, 163, 166-67, 237, 256, 362, 391, 462, 471-79, 487, 506; H.K. Mann, *Lives* 9, 173, 177, 224-25, 260, 263, 292, 303-04, 309-310, 338; H.K. Mann, *Lives* 10, 11-70, 339, 442.
[3] Bernard of Clairvaux, *Letters*, no. 287, 290, 296, 306, 307 (B.S. James, no. 414, 355, 361, 373, 372); B. Zenker, *Mitglieder*, 21-22.

Tuscany or northern Umbria (around Città di Castello).[1] Cardinal Goizo, promoted to the priesthood of S. Cecilia (1140-44) by Innocent II, appeared in five letters, three of which concerned controversies. He was personally close to Celestine II, to Lucius II as chancellor and pope, and to Gerhoh of Reichersberg, who called him 'the Saul of the Church;' he was also a legate in northern Italy, around Lombardy, at the end of Innocent's pontificate.[2] The French Jordan, a Carthusian created cardinal-deacon of an unknown title by Lucius II (1144-45) and quickly promoted to the priesthood of S. Susanna (1145-54) by Eugene, who subsequently appointed him papal chamberlain, appeared in four letters, three of which concerned controversies. Eugene would send him ca. 1151 on legation with Cardinal Octavian to Germany, whence he proceeded as legate into France; and he would acquire, thanks to John of Salisbury, a reputation as a religious hypocrite and rapacious and unscrupulous in his business dealings—condemned as such, in fact, according to John of Salisbury, by his own former prior at Le Mont-Dieu (near Reims).[3]

The cardinal-deacon Jacinth Bobo of S. Maria in Cosmedin (1144-91), who would become the aged Pope Celestine III (1191-98), appeared in four letters, three of which concerned controversies. A Roman nobleman—his family was linked to the Orsini—and secular cleric, he had studied in France probably under Abelard, becoming his leading supporter in the curia—John of Salisbury reported that he, together with Arnold of Brescia, 'zealously fostered' the cause of Abelard 'against the abbot of Clairvaux.' He entered the Roman Church under Honorius II and was promoted by Lucius II. As a close friend of King Louis VII of France he served frequently as intermediary between the French and papal courts. He would have an active career after 1153: he served two long legations to Spain (1154-55 and 1172-75), becoming in the process a curial expert on Spanish affairs, and on both occasions organised the holy war there; he served two legations to the German emperor (1158 and 1177), the first as one of two legates, along with Cardinal Henry, sent to Frederick I to pacify the emperor with the more benign explanation of the use of the term *beneficium* after the scandal caused at Besançon by Cardinals Roland and Bernard; and two legations to France under Alexander III (1162 and 1165), whom he supported in the schism. As pope, he continued his predecessor's 'policy' of creating a predominance of aristocratic Romans in the college.[4]

The cardinal-priest Bernard of S. Clemente (1145-58) appeared in seven total letters, two

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[1] *HP*, 44; B. Zenker, *Mitglieder*, 85, 153.
[2] B. Zenker, *Mitglieder*, 65-66.
[3] *HP*, 75-78; Otto of Freising, *Gesta*, 110; B. Zenker, *Mitglieder*, 104-06, 190; see also above, ch. 6.2.
[4] Otto of Freising, *Gesta*, 194, 197-200, 253-54, 298, 328; *HP*, 62-63; B. Zenker, *Mitglieder*, 161-67; W. Maleczek, *Papst und Kardinalskolleg*, esp. 1-124, 287-392; I.S. Robinson, *Papacy*, xi, 8, 31-32, 44, 47, 51, 56, 58, 85-90, 92-93, 112-13, 118-20, 147-48, 166, 169-70, 173, 175-77, 191-92, 194, 216, 218, 235, 239-40, 259-62, 273, 306, 323, 334, 336, 349, 395-97, 469, 499, 510-16, 521-22; G.W. Greenaway, *Arnold of Brescia*, 67, 77-79, 170; H.K. Mann, *Lives* 10, 44, 63, 305, 352, 376-441.

of which concerned clerical controversies. Originally a canon of S. Frediano, he was regarded as religious and well educated, with a juristic training—he was probably a *magister*. He became prior of the regular canons of the Lateran, composing in 1145 for his community there the customary, the *Ordo officiorum ecclesiae Lateranensis*, thus establishing a regular observance of the divine service in the cathedral of the pope. He was created cardinal by Eugene the same year and served probably simultaneously as the archpriest of St. Peter's. He eventually became an influential member of the college: a future member of the pro-Sicilian party, he was a negotiator of the Treaty of Constance, whence he proceeded on legation into Germany, whence he was expelled by Barbarossa along with his fellow legate, Gregory(2). He then returned on legation with Cardinal Roland to the imperial diet at Besançon in 1157—Otto of Freising's continuator described the two legates as distinguished for 'their maturity of view, and their influence, and surpassing in prestige almost all others in the Roman Church.' Adrian IV would accordingly promote him to the bishopric of S. Rufina/Porto (1158-76); and he would strongly support Alexander III during the schism on numerous legations.[1]

Gregory(2) was created cardinal-deacon of S. Angelo (1137-54) by Innocent II and appeared in six letters of the period 1143-53, two of which concerned a clerical controversy. Promoted to the bishopric of Sabina (1154) by Anastasius IV, his early career and background is obscure. He was maligned by John of Salisbury who accused him of accepting a bribe along with Cardinal John(3) Paparo to effect the uncanonical divorce of Count Ralph of Vermandois—John later noted that Paparo was, after only Cardinal Cencius, the *efficacissimus institutor* of Gregory(2) in corruption and the devising of stratagems. Similarly, John of Salisbury associated Gregory(2), along with Cardinal Guido de Summa and others, with the 'intrigues' of Bishop Henry of Winchester, probably between 1149 and 1150. Along with Cardinal Jacinth, as '*ministri* of the lord pope,' Gregory(2) also accompanied Louis VII of France from Ceprano to Aquapendente upon his return from the Holy Land through Norman Italy. He was also a negotiator of the Treaty of Constance, and legate to Germany with Cardinal Bernard in 1153. Gerhoh of Reichersberg would similarly malign him for corruption during this legation, as he would interdict the abbey of St. Albans, Mainz for serving him and his retinue less than sufficiently sumptuous victuals.[2]

Cardinal Octavian's opponent in 1159, Roland, the future Pope Alexander III (1159-81), appeared in five letters, two of which concerned controversies. From Siena, he may have been a member of the important Sienese family of Bandinelli, though this was not corroborated by any

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[1] Otto of Freising, *Gesta*, 120-23, 179-86, 190-94, 199-200, 292, 297, 328; *PL*, Alexander III, no. 105, col. 179 (JL, 10,772); Wibald, no. 412, 414, 415, 416, 417, 426; Bernard of Clairvaux, *Letters*, no. 302 (B.S. James, no. 368); Gerhoh of Reichersberg, *De investigatione*, 360; Gerhoh of Reichersberg, *De quarta vigilia noctis*, 513; *IP* 1, 27/17; JL, 10,772; B. Zenker, *Mitglieder*, 29-32, 116.

[2] *HP*, 12, 62, 71, 78-80; Otto of Freising, *Gesta*, 120-123; Gerhoh of Reichersberg, *De quarta vigilia noctis*, 513; Wibald, no. 412, 414, 415, 416, 417, 426, 431; Bernard of Clairvaux, *Letters*, no. 302 (B.S. James, no. 368); B. Zenker, *Mitglieder*, 48-50, 174; I.S. Robinson, *Papacy*, 162.

contemporary evidence. His early career was redefined in the late 1970s by J.T. Noonan and R. Weigand who challenged the tradition assigning to Roland, as a Bolognese lawyer and pupil of Gratian, the authorship of a decretistic *Summa* and a theological *Sententiae*. P. Classen in turn challenged this redefinition in favour of the older tradition. In any event, Roland was noted for his learning, probably as a theologian if not also as a lawyer, and probably studied and then taught for a period before ca. 1142 at Bologna. From that point he became a canon regular in the church of Pisa, where he probably attracted the notice of Eugene III during the papal stay there in October-November 1148, and was duly summoned to Rome, soon being elevated to the cardinalate as deacon of SS. Cosma e Damiano (1150-51), and quickly promoted to the priesthood of S. Marco (1151-59). In proportion to his swift ascent through the curia, he was a negotiator of the Treaty of Constance and quickly thereafter become chancellor sometime before May 1153. In that post he remained under Anastasius IV and Adrian IV and became a leading proponent of the pro-Sicilian 'policy' under Adrian and the chamberlain Boso: he was a negotiator of the Treaty of Benevento in 1156, and was one of the two cardinal legates, along with Cardinal Bernard, reported by Otto of Freising's continuator, Rahewin, to instigate the *beneficium* controversy at the imperial diet of Besançon in 1157.[1]

The Roman Gregory(3), cardinal-priest of S. Maria in Trastevere (1140-54) and later bishop of Sabina (1154-62), appeared in four letters, two of which concerned clerical controversies. His history is mostly obscure: he was a negotiator of the Treaty of Constance and member of the pro-Sicilian party.[2] The Bolognese cardinal-priest Hubald(2) of S. Croce in Gerusalemme (1144-70) enjoyed a long career but appeared in only three letters of this period, two

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[1] *LP*, 397-446; *Life of Alexander*, and intro. by P. Munz, esp. 7-9; Otto of Freising, *Gesta*, 179-86, 190-94, 282-339; *HP*, 71; *Constitutiones*, 588-90, no. 413; *IP* 8, 48-49; Romuald of Salerno, *Chronicon*, 240-41; *Annales Ceccanenses*, 284, *Annales Casinenses*, 311-12; J.T. Noonan, 'Who was Rolandus?,' *Law, Church, and Society: Essays in Honor of Stephan Kuttner*, ed. K. Pennington and R. Somerville (Pennsylvania, 1977), 21-48; R. Weigand, '*Magister* Rolandus und Papst Alexander III.,' *Archiv fur katholisches Kirchenrecht* 149 (1980), 3-44; R. Weigand, 'Glossen des *Magister* Rolandus zum Dekret Gratians,' *Miscellanea Rolando Bandinelli, Papa Alessandro III*, ed. Filippo Liotta (Accademia senese degli intronati: Siena, 1986), 391-423; M. Pacaut, *Alexandre III: Étude sur la conception du pouvoir pontifical dans sa pensée et dans son oevure* (*L'Église et l'état au moyen âge* 11: Paris, 1956), esp. 51-105; B. Zenker, *Mitglieder*, 85-88, 148; H.K. Mann, *Lives* 9, 5, 123, 173, 275, 286-92, 308-09, 330-36, 343; H.K. Mann, *Lives* 10, 1-238, 258, 260, 278, 316, 323, 374, 384, 388; I.S. Robinson, *Papacy*, 11, 15, 19, 22, 28, 31, 40-47, 50-58, 78-98, 107-112, 116-18, 121, 131, 135, 139-48, 163-75, 177, 184-86, 191, 194-202, 216-18, 220-22, 232-43, 247-48, 256-62, 267-69, 274, 278-83, 286-91, 301-04, 306, 311-12, 319, 323, 334-41, 347-48, 362-63, 389-94, 460, 466, 468, 470-500, 504, 513; B. Smalley, *Becket Conflict*, 138-59. While it has also been maintained that Alexander III's letters never specifically referred to the *Decretum* when citing canon law, that there is no unambiguous evidence that the *Decretum* was consulted in the curia before the pontificate of Clement III, and that the *Decretum* became the canon law book of the curia only in 1190s, from which point it was regularly cited by popes upon pronouncing judgement (see, W. Holtzmann, 'Die Benutzung Gratians in der päpstlichen Kanzlei im 12. Jahrhundert,' *Studia Gratiana* 1 [1953], 323-49; I.S. Robinson, *Papacy*, 207, 483), S. Chodorow and C. Duggan have demonstrated that several unedited decretal letters 'indicated that the *Decretum* was used in the chancery of Alexander III, earlier than has been supposed.' W. Holtzmann, S. Chodorow and C. Duggan, Decretales ineditae, viii.

[2] Otto of Freising, *Gesta*, 292, 297, 317-18; B. Zenker, *Mitglieder*, 51, 56.

concerning clerical controversies. Another relative of Lucius II, who probably created him, he was a canon at S. Frediano and a supporter of Alexander III. He did not evidently play an important role in the curia; although he was a member of the pro-Sicilian party.[1] And lastly, the Neapolitan John(2), originally associated with St. Victor, Paris, and created cardinal-deacon of SS. Sergio e Bacco (1150-58) by Eugene III and promoted by Adrian IV to the priesthood of S. Anastasia (1158-83), likewise appeared in three letters, two concerning clerical controversies. A member of the pro-Sicilian party, from 1158 and especially under Alexander III, in whose election he seems to have played a key role, he would have an active and important career, used especially as a diplomat to Sicily.[2]

[1] B. Zenker, *Mitglieder*, 132.
[2] Otto of Freising, *Gesta*, 297, 310-11, 317, 328; B. Zenker, *Mitglieder*, 73-77, 156; I.S. Robinson, *Papacy*, 50, 53, 143, 392-93.

APPENDIX 3 CATALOGUES OF PAPAL LETTERS, 1143-53

Number of Letters Concerning or Classified under:	'Clerical Temporalities'
Celestine II and Lucius II	151[1]
Eugene III—Through 1146	154[2]

[1] *PL*, Celestine II, no. 2, 4, 10, 15, 17, 18, 20, 23, 24, 28 (*RRH*, no. 221; JL, 8481), 35, 46; *PL*, Lucius II, no. 10, 11, 13, 14, 19, 23, 26, 28 (JL, 8593), 33, 40, 43, 47, 48, 50, 52, 53, 57, 59, 60, 61, 64, 68, 75, 77, 79, 81, 86, 87, 91, 92, 94; JL, 8508, 8537, 8539, 8545, 8548, 8552, 8553, 8576 (P. Classen, *Gerhoh von Reichersberg*, 342, no. 32), 8626, 8696, 8696a, 8697 (*laudatum* in *EPRI*, no. 207 [JL, 9632]); *IP* 1, *100/4, *107/9, 141/30, *180/7; *IP* 2, *33/1; *IP* 3, *122/17. *337/30, *337/31, *429/83, *411/7; *IP* 4, *71/26, *112/1, *112/2; *IP* 5, *60/202, *60/203; *IP* 6/1, 77/12 (JL, 8438), *76/10 (JL, 8471), *79/22, *79/23, *80/26, *379/22, 78/17, 79/21, 79/24, 80/25, *252/3, *276/7, *276/8; *IP* 7/1, *288/1; *IP* 7/2, *21/42, *21/43, *22/44; *IP* 8, 179/252 (P-H *Iter*, 236; JL, 8655), *44/166, *44/167, *44/168; *LC*, 428, no. 172 (*IP* 1, 191/1; JL, 8710), *LC*, 403-04, no. 124 (*Antiquitates* 4, 241-42; *IP* 3, 482/1); Theiner 1, 14, no. 16 (*LC*, 402-03, no. 123; *Antiquitates* 4, 37-38; *IP* 2, 204/2), Theiner 1, 13-14, no. 15 (*APRI* 2, no. 377; JL, 8465); Otto of Freising, *Two Cities*, Bk. 7. XXXI. 331-32 (*PL*, Lucius II, no. 83; Mansi 21, 609; JL, 8684); *APRI* 2, no. 379 (JL, 8571), 380 (JL, 8632), 382 (JL, 8654), 383 (JL, 8659), 384 (JL, 8660), 385 (JL, 8695); *APRI* 3, no. 55 (JL, 8516), 61 (JL, 8664), 63 (*IP* 1, 27/17; P-H *Iter*, 238; JL, 8711), 320 (JL, 8575: see, JL, *Addenda et corrigenda*—wrongly attributed to Lucius III); *Historia monasterii S. Augustini Cantuariensis*, 390-91, no. 22 (*PL*, Lucius II, no. 80; JL, 8581), 391-92, no. 23 (*PL*, Lucius II, no. 82; JL, 8580); Archives historiques du Poitou 3, 9, no. 6 (JL, 8528), 9, no. 7 (apparently not in JL); PUE2, no. 33, 34, 36 (JL, 8625), 38 (JL, 8627), 40 (JL, 8686), 41; PUTJ1, no. 8 (JL, 8478), 9 (see, PUTJ1, no. 8); *EPRI*, no. 187 (JL, 8547), 188 (JL, 8554), 189 (JL, 8555); 190 (JL, 8612); PUF1, Nach. Gott., no. 27 (JL, 8584); PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); PU in Florenz, no. 10 (*IP* 3, 122/18), 11 (*IP* 3, 138/11), 12 (*IP* 3, 138/12); Le bolle pontificie, Montecassino, no. 18 (*IP* 2, 158/12); PUE1, no. 29; PUF5, no. 58, 59, 60; PUF2, no. 19, 22, 24, 27; PUF6, no. 53, 54; PUN, no. 46; PUKHL, no. 50 (*RRH*, no. 214; JL, 8472a); PUF8, no. 19 (JL, 8487), 22 (JL, 8624), 23, 24 (JL, 8671); PUF9, no. 42; PUS1, no. 53 (JL, 8546); PUP, no. 41, 44, 45; PUF5, Nach. Gott., no. 17; PU in Malta, no. 2 (see, PUTJ1, no. 8).

[2] *PL*, Eugene III, no. 2, 6, 8, 9, 11, 19, 21, 25, 28, 29, 34, 35, 36, 37, 38, 39, 43, 46, 48 (Otto of Freising, *Gesta*, 71-73; JL, 8796), 56, 59, 60, 64, 72, 81, 82, 87, 89 (JL, 8876; see, *PL*, Eugene III, no. 48 [Otto of Freising, *Gesta*, 71-73; JL, 8796]), 92, 93 (*Bambergensia*, no. 35; JL, 8882), 96, 97, 100, 101, 114, 121, 123, 124, 125, 126, 127, 131, 134, 135, 142, 145, 146, 147, 148, 149, 150, 151; JL, 8818 (*PL*, Eugene III, no. 26), 8821 (see, PUTJ1, no. 8), 8866, 8905 (*laudatum* in *APRI* 3, no. 74 [JL, 8906]), 8920, 8989 (*laudatum* in *PL*, Eugene III, no. 151); *IP* 4, *32/4, 46/2 (Mansi 21, 695; *Antiquitates* 4, 141 n.); *IP* 5, *476/20; *IP* 6/1, *253/4, *253/5, *253/6, *253/7, *253/8, *254/10, *254/12, *317/3; *IP* 6/2, 19/9; *IP* 7/1, *273/2; *IP* 7/2, *22/45, *108/3; *Historiae Tornacenses*, 345-46 (JL, 8889, 8890); Otto of Freising, *Two Cities*, Bk. 7. XXXI. 331-32 (*IP* 1, *180/8); *LC*, 384, no. 95 (*Antiquitates* 2, 559-60; *IP* 2, 207/1); PU in Mailand, no. 9 (*IP* 7/1, 339/38; P-H *Iter*, 239; JL, 8749; the same, nearly, as *Antiquitates* 5, 259-60, *PL*, Innocent II, no. 158, col. 208-09, both from Innocent II); *APRI* 1, no. 201 (JL, 8829), 204 (JL, 8919); *APRI* 2, no. 387 (JL, 8774), 388 (JL, 8775), 389 (JL, 8814), 390 (JL, 8816), 391 (JL, 8784); *APRI* 3, no. 73 (JL, 8898), 75 (JL, 8916), 76 (*IP* 3, 325/29; *IP* 10, 383/42; JL, 8929), 70 (JL, 8826), 80 (JL, 8960; *IP* 6/1, 254/13), 82 (*PL*, Eugene III, no. 141; JL, 8975); PUS1, no. 54 (JL, 8928); *EPRI*, no. 191 (JL, 8751), 192 (JL, 8833), 194 (JL, 8888), 195 (JL, 8887), 197 (JL, 8955), 198 (JL, 8954), 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959); Archives historiques du Poitou 2, 33-34, no. 21 (JL, 8842); *Historia monasterii S. Augustini Cantuariensis*, 404, no. 32 (JL, 8904); PUE3, no. 47, 48, 49, 50, 54, 58; PUF1, Nach. Gott., no. 30 (JL, 8819), 31 (JL, 8832); PU in Pisa, no. 2 (*IP* 5, 61/204); PU in Piemont, no. 4 (*IP* 6/2, 14/28); Römische Analekten, 35-36, no. 3 (*IP* 1, 77/20); Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4), 9 (*IP* 5, 464/20); PUE2, no. 42, 45, 50 (JL, 8863), 55; PUF5, no. 62, 65, 67, 69 (JL, 8823); PUF2, no. 31, 32, 33, 41, 42, 43 (JL, 8961); PUF7, no. 56, 57 (JL, 8912); PUF6, no. 56; PUF1, no. 41 (JL, 8756), 42 (JL, 8822); PUN, no. 50, 51, 54, 56, 57; PUTJ1, no. 10, 11 (see, PUTJ1, no. 8); PUKHL, no. 63 (PU in Malta, no. 3); PUS2,

Eugene III—1147-8 July 1148[1]	132[2]
Eugene III—After 8 July 1148 and Undated	332[3]

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no. 46, 47, 48, 49, 52, 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934), 57; PUF2, Nach. Gott., no. 10; PUF5, Nach. Gott., no. 22 (JL, 8884); PUF7, Nach. Gott., no. 32; PU in Sizilien, no. 3 (see, PUTJ1, no. 8); PUF4, Nach. Gott., no. 22.

[1] That is, the period of the pope and curia's French sojourn, from the time they left central Italy until the Council of Cremona held on 8 July 1148.

[2] *PL*, Eugene III, no. 164, 166, 168, 169, 174, 175, 183, 185, 186, 187, 194, 199, 200, 203, 204, 208, 209, 214, 221, 222, 228, 229, 231, 243, 244, 245, 246, 247, 254, 255, 256 (*IP* 7/1, 339/42; JL, 9189), 259, 266, 270, 271, 272, 274, 275, 279, 280, 284, 285, 288, 292, 296, 297, 298, 303, 305, 307, 308, 332, 333, 334; Mansi 21, 713-18 (JL 2, 52-53), Council of Reims, cc. 2, 3, 4, 6, 8, 10-13, 15, 16; JL, 9045, 9046, 9123, 9149 (complete text) (*PL*, Eugene III, no. 232), 9193, 9201 (*PL*, Eugene III, no. 263); *IP* 1, 80/6; *IP* 3, *403/31, *431/92, *138/13, *138/14; *IP* 4, 110/6, 71/28; *IP* 6/1, 122/2 (*PL*, Eugene III, no. 306; JL, 9274/9276); *IP* 6/2, 23/9, *192/6, 119/6; *IP* 7/2, *22/46; *APRI* 1, no. 207 (JL, 8996), 211 (JL, 9074), 213 (JL, 9119), 218 (JL, 9176); *APRI* 3, no. 84 (JL, 9007); *EPRI*, no. 200 (JL, 9079), 201 (JL, 9164), 202 (JL, 9237), 203 (JL, 9243); *EPRI*, no. 202/JL, 9238 (*laudatum* at the end of *EPRI*, no. 202); Archives de l'Orient latin 2, 253, no. 1 (JL, 9165), 253-54, no. 2 (JL, 9166), 255, no. 4 (JL, 9241); Cartulaire de l'église Notre-Dame de Paris 1, 27, no. 6 (JL, 9073) (see, 28-29, no. 8); *Historia monasterii S. Augustini Cantuariensis*, 403-04, no. 31 (JL, 8990); *Chronicon monasterii de Abingdon* 2, 200 (JL, 9100); PUE3, no. 62, 65, 69, 70, 71; PU in Piemont, no. 5 (*IP* 6/2, 23/10); PU in Florenz, no. 14 (*IP* 3, 138/15); Nachträge zu den PU in Italiens 8, no. 4 (*IP* 6/2, 230/3); PUE1, no. 38; PUE2, no. 56; PUF5, no. 71, 72; PUF2, no. 46, 48, 50; PUF7, no. 66; PUF6, no. 59, 61, 62; PUF1, no. 43, 44, 51 (JL, 9171), 53, 55, 56 (JL, 9227); PUF8, no. 32 (*PL*, Eugene III, no. 320; JL, 9297); PUTJ2, no. 5; PUS2, no. 60 (JL, 9258); PUF1, Nach. Gott., no. 36; PUF2, Nach. Gott., no. 14, 15; PUF7, Nach. Gott., no. 35.

[3] *PL*, Eugene III, no. 311, 316, 324, 329, 336, 337, 340, 341, 343, 344, 346, 348, 350, 351, 352, 354 (Otto of Freising, *Gesta*, 106-08; JL, 9344), 355, 356, 357, 359, 361, 362, 363, 366, 367, 369, 372, 373, 374, 376, 378, 379, 382, 383, 385, 386, 387, 388 (JL, 9392), 390, 391, 392, 393, 394, 395, 398, 399, 400, 401, 403, 408, 412, 413, 416, 417, 422, 423, 425, 427, 428, 429, 430, 431, 433 (JL, 9457; see, *HP*, 70), 434, 435 (JL, 9459; see, *HP*, 70), 443, 444, 452, 453, 458, 459, 460, 462, 463/545 (*Decretales*, Gregory IX, Bk. 5. XVII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4; JL, 9508/9656), 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 480, 481, 484, 485, 486, 487, 488, 491, 492, 493, 494, 495, 497, 499, 500, 504, 505, 506, 507, 511, 512, 513, 514, 516 (PUS1, no. 70 [9/24/53-54]: 'Der Text wiederholt das Breve Eugens III. vom 22. Juni 1152 JL. 9594 [*PL*, Eugene III, no. 516];' JL, 9594), 521, 522, 523 (Otto of Freising, *Gesta*, 120-22; JL, 9605), 524, 527, 528, 529, 531, 532, 534 (*Decretales*, Gregory IX, Bk. 2. VII. 4; JL, 9653), 541, 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 67; *IP* 5, 251/25, 181/6; JL, 9654), 548, 550, 551, 552, 554, 557, 559, 561, 562, 563, 564, 565, 566, 568, 570/71, 577, 579, 580, 583 (*IP* 3, 251/1; JL, 9726/9727); JL, 9291a, 9297b, 9318, 9339 (Cartulaire de l'église Notre-Dame de Paris 1, 226, no. 11; *PL*, Eugene III, no. 349), 9367, 9383 (see, PUTJ1, no. 8), 9412a (JL: *Fragm. hoc Alexandro III. perperam tribuitur*), 9432 (*laudatum* in PUE2, no. 64 [JL, 9433]), 9447, 9467, 9485, 9500, 9505a, 9509, 9533, 9560, 9568, 9569a, 9573 (*PL*, Eugene III, no. 503), 9576; *IP* 1, *142/33, 28/18, *55/7, *192/3, 198/5, 51/6, 51/7; *IP* 2, *223/7, *188/1, 158/13, 171/1, 79/4, *147/2, *147/3, *95/42, *169/5, *169/6; *IP* 3, 4/14, *284/19; *IP* 4, *150/9, 71/27; *IP* 5, *278/5, *278/6, 278/7, *236/10, *62/212, *315/1 (*laudatum* in *PL*, Eugene III, no. 339), 315/3, *250/23, *320/4, *320/6; *IP* 6/1, *212/3, *325/12, 188/1, *325/13 (*laudatum* in *PL*, Eugene III, no. 512), 381/32, *268/19, 268/20; *IP* 6/2, *382/2, 161/1, 174/13, *32/4, *14/31, *215/10, *32/5, *136/19, *136/20, *137/23; *IP* 7/1, *323/1, *239/23; *IP* 7/2, *22/47, *104/3, *108/4; *IP* 8, *180/259, *44/169, *44/170, *179/255; *IP* 9, *250/6, *41/102, *95/50, 77/1; *IP* 10, *243/1; *HP*, 45-46 (JL, 9287, 9288, 9289), 65-67 (*IP* 8, *45/173), 67-69 (*IP* 8, *45/174), 80-82 (*IP* 8, *46/175; *IP* 9, *172/1); Kanonistische Ergänzungen zur *Italia Pontificia*, no. 66 (*IP* 5, 236/11); *APRI* 1, no. 227 (JL, 9672), 228 (JL, 9665); *APRI* 2, no. 401 (JL, 9574), 402 (JL, 9575), 403 (JL, 9603); *APRI* 3, no. 91 (JL, 9292), 94 (JL, 9478), 95 (JL, 9480), 96 (JL, 9479), 99 (JL, 9441), 112 (Mansi 21, 626; *IP* 2, 119/7), 114 (JL, 9732); *LC*, 88-89 (*Antiquitates* 5, 864; *IP* 4, *163/21), *LC*, 384-85, no. 96 (*Antiquitates* 2, 559-60; *IP* 2, 207/2), *LC*, 380-82, no. 91 (*Antiquitates* 3, 793-96; *IP* 3, 241/14), *LC*, 382-83, no. 92 (Theiner 1, 14-15, no. 18; *Antiquitates* 3, 777-78; *IP* 1, 187/5), *LC*, 383, no. 93 (*Antiquitates* 3, 779; *IP* 1, 192/2), *LC*, 383-84, no. 94 (Theiner 1, 14, no. 17; *IP* 2, 207/3); Theiner 1, 15-16, no. 19 (*LC*, 375-76, no. 85; *PL*, Eugene III, *Variorum ad Eugenium papam epistolae*, no. 24, col. 1638-40; *Constitutiones*, 201-03, no. 144-45); *Antiquitates* 3, 1167 (*IP* 3, 326/32); *Antiquitates* 5, 1013 (*IP* 6/2, *391/1—a *charta* of Gotifredus, bishop of

Eugene III—Total	618
Total	770

Number of Letters Concerning or Classified under:	'Clerical *Controversiae*'
Celestine II and Lucius II	105[1]
Eugene III—Through 1146	104[2]

Luni); *Decretales*, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506); PUE1, no. 49, 50 (*HP*, 88; JL, 9513); PUF4, no. 63 (JL, 9378); PUF3, no. 30 (*Chronica S. Bertini,* 801; *PL*, Eugene III, no. 15-16; JL, 9510), 32, 33; PUF5, no. 73, 74, 76; PUF2, no. 61 (JL, 9437), 65, 66 (JL, 9685), 67, 68, 69, 70, 71; PUTJ1, no. 13, 17, 18; PUS1, no. 57, 59, 60, 62; PUS2, no. 66, 68; PUP, no. 49; PUF7, Nach. Gott., no. 36; PU des Nordens, no. 10, 11; PUF3, Nach. Gott., no. 6; Wibald, no. 214 (Otto of Freising, *Gesta*, 61-63; *IP* 8, *45/172), 347 (*Constitutiones*, 188-89, no. 134; *IP* 1, 180/9), 354 (JL, 9521); *Compilatio secunda*, Bk. 3. VI. 2 (JL, 9659); PUE2, no. 59, 60, 63, 64 (JL, 9433), 65 (JL, 9428), 66, 71 (JL, 9591), 73 (JL, 9503), 75; PUE3, no. 79 (JL, 9547), 82, 86, 90; PUF6, no. 63 (JL, 9358); PUF7, no. 70 (PUTJ1, no. 14; JL, 9438); PUF8, no. 39 (JL, 9637), 41 (*PL*, Eugene III, no. 547; JL, 9661), 42; PUF9, no. 45 (*PL*, Eugene III, no. 555; JL, 9678); PUN, no. 68 (JL, 9664); *EPRI*, no. 205 (JL, 9530), 207 (JL, 9632), 208 (JL, 9663), 209 (JL, 9670), 212 (JL, 9722); Varietà, 400-03, no. 1 (*IP* 1, 173/3; JL, 9604); Archives historiques du Poitou 3, 20, no. 14 (JL, 9314), 20, no. 15 (JL, 9315); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 369-70, no. 941 (JL, 9393); *Historia monasterii S. Augustini Cantuariensis*, 402, no. 30 (JL, 9537); PUF1, Nach. Gott., no. 42 (JL, 9669); PU in Campanien, no. 10 (*IP* 2, 147/4); PU in westlichen Toscana, no. 6 (*IP* 3, 432/100; JL, 9481); PU in Padova, no. 3 (*IP* 7/1, 315/6); PU in Venetien, no. 7 (*IP* 7/1, 106/1); PU in Pisa, no. 4 (*IP* 5, 62/213), 5 (*IP* 5, 63/214); PU in Piemont, no. 7 (*IP* 6/2, 215/12); PU in Turin, no. 13 (*IP* 6/2, 174/14); Urkunden zur Geschichte von Farfa, 177-78, no. 1 (*IP* 2, 68/52); Nachträge zu den römischen Berichten, no. 8 (*IP* 1, 141/31); Nachträge zu den PU in Italiens 5, no. 10 (*IP* 5, 477/26); Nachträge zu den PU in Italiens 9, no. 6 (*IP* 7/1, 239/24; JL, 9333), 7 (*IP* 7/1, 239/25; P-H *Iter*, 246; JL, 9668); Le bolle pontificie, Montecassino, no. 20 (*IP* 8, 180/260), 21 (*IP* 8, 181/261).

[1] *PL*, Celestine II, no. 4, 10, 11, 16, 25, 31 (P. Classen, *Gerhoh von Reichersberg*, 341-42, no. 31; JL, 8484), 35, 41, 44, 46; *PL*, Lucius II, no. 11, 23, 24, 25, 29 (JL, 8594), 39, 40, 41, 43, 55, 61, 79, 86, 89; JL, 8508, 8545, 8576 (P. Classen, *Gerhoh von Reichersberg*, 342, no. 32), 8696, 8698 (*laudatum* in a letter of Eugene III, Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 364, no. 932 [JL, 8780]), 8699 (*laudatum* in a bull of Clement IV); *IP* 1, *126/8; *IP* 2, *158/11; *IP* 3, *122/17, *337/30, *429/83, *411/7, *337/31; *IP* 5, *60/202, *60/203, *297/1; *IP* 6/1, *76/10 (JL, 8471), 77/12 (JL, 8438), *288/9, 78/17, 79/21, *79/22, *79/23, 79/24, 80/25, *80/26, *252/3, *267/15, 267/16, *325/5, *325/6; *IP* 6/2, 18/4, *378/16, *378/17; *IP* 7/1, *252/3, *267/15, *338/35, *338/36; *IP* 10, *439/3, *451/2, *447/1, *339/24; *APRI* 2, no. 379 (JL, 8571), 380 (JL, 8632), 382 (JL, 8654), 383 (JL, 8659), 384 (JL, 8660), 385 (JL, 8695); *APRI* 3, no. 55 (JL, 8516); *Historia monasterii S. Augustini Cantuariensis*, 390-91, no. 22 (*PL*, Lucius II, no. 80; JL, 8581); PUF8, no. 22 (JL, 8624), 23, 24 (JL, 8671); PUF6, Nach. Gott., no. 11 (JL, 8542), 12 (JL, 8543); PUKHL, no. 50 (*RRH*, no. 214; JL, 8472a), 51, 58 (*PL*, Lucius II, no. 88; JL, 8700); Archives historiques du Poitou 3, 9, no. 6 (JL, 8528), 9, no. 7 (apparently not in JL); PU im ehemaligen *Patrimonium*, no. 2 (*IP* 3, 260/9); PU in Florenz, no. 10 (*IP* 3, 122/18), 11 (*IP* 3, 138/11), 12 (*IP* 3, 138/12); Nachträge zu den PU in Italiens 2, no. 9 (*IP* 3, 179/15; JL, 8497); Le bolle pontificie, Montecassino, no. 18 (*IP* 2, 158/12); PUE1, no. 29; PUE2, no. 33, 34, 39 (JL, 8628); PUF2, no. 24, 27; PUF6, no. 54; PUN, no. 46; PUF9, no. 42; PUP, no. 44, 45; PUF5, Nach. Gott., no. 17; PUF7, Nach. Gott., no. 28, 29, 30.

[2] *PL*, Eugene III, no. 2, 6, 8, 18, 22, 25, 35, 36, 37, 38, 39, 43, 60, 61, 62, 64, 65, 72, 76, 81, 82, 91, 101, 105, 125, 127, 131, 134, 135; JL, 8858, 8905 (*laudatum* in *APRI* 3, no. 74 [JL, 8906]), 8920; *IP* 5, 325/7 (JL, 8762), *476/20; *IP* 6/1, *370/24, *370/25, *253/4, *253/5, *253/6, *253/7, *253/8, *254/10, *254/12,*325/10; *IP* 6/2, *13/26, *14/27, 19/9, *135/14, *365/1; *IP* 7/1, 236/14, *273/2; *IP* 7/2, *108/3; *APRI* 1, no. 204 (JL, 8919); *APRI* 2, no. 386 (JL, 8753), 387 (JL, 8774), 388 (JL, 8775), 389 (JL, 8814), 390 (JL, 8816); *APRI* 3, no. 73 (JL, 8898), 75 (JL, 8916), 71 (JL, 8830), 80 (*IP* 6/1, 254/13; JL, 8960); PUE2, no. 42, 45, 50 (JL, 8863), 52; PUE3, no. 47, 48, 49, 50, 54, 58; PUS2, no. 46, 47, 48, 49, 52, 54 (JL, 8936), 55 (JL, 8935), 56 (JL, 8934), 57; *EPRI*, no. 191 (JL, 8751), 193 (JL, 8877), 196 (JL, 8897), 197 (JL, 8955); Archives historiques du Poitou 2, 33-34, no. 21 (JL, 8842); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 364, no. 932 (JL, 8780); *Historia monasterii S. Augustini Cantuariensis*, 404, no. 32 (JL, 8904);

Eugene III—1147-8 July 1148	81[1]
Eugene III—After 8 July 1148 and Undated	225[2]
Eugene III—Total	410
Total	515

PU in Piemont, no. 4 (*IP* 6/2, 14/28); PU in Pisa, no. 2 (*IP* 5, 61/204); Nachträge zu den PU in Italiens 5, no. 8 (*IP* 5, 522/4), 9 (*IP* 5, 464/20); PUF5, no. 62, 67, 69 (JL, 8823); PUF2, no. 33, 34, 36, 37; PUF1, no. 42 (JL, 8822); PUN, no. 50, 59; PUF1, Nach. Gott., no. 31 (JL, 8832); PUF2, Nach. Gott., no. 10.

[1] *PL*, Eugene III, no. 152, 168, 183, 185, 186, 187, 195, 201, 203, 209, 229, 239, 243, 246, 247, 253, 254, 256 (*IP* 7/1, 339/42; JL, 9189), 264, 280, 281, 288, 289, 292, 296, 299, 303, 305, 308, 332, 333, 334; JL, 8999, 9123, 9159 (*laudatum* in *APRI* 2, no. 394 [JL, 9160]), 9185, 9201 (*PL*, Eugene III, no. 263), 9217, 9279; *IP* 1, 80/6; *IP* 3, *138/13, *138/14, *403/31; *IP* 4, 71/28; *IP* 5, *450/38, *61/205, *61/207; *IP* 6/2, 135/15 (*PL*, Eugene III, no. 157; JL, 9004), *378/19; *IP* 7/1, *339/40, *339/41; *HP*, 50 (*IP* 6/1, *60/164, *60/165, *60/166; *IP*, 6/2, *267/8); *APRI* 1, no. 207 (JL, 8996), 212 (JL, 9115), 218 (JL, 9176); *APRI* 2, no. 394 (JL, 9160); Glanfeuil Forgeries, Appendix, 249, no. 9-9c (*Annales Casinenses*, 310; *IP* 8, *179/254); PUF1, no. 52, 55, 56 (JL, 9227); PUS2, no. 60 (JL, 9258); *EPRI*, no. 201 (JL, 9164), 202 (JL, 9237); *EPRI*, no. 202/JL, 9238 (*laudatum* at the end of *EPRI*, no. 202); Archives de l'Orient latin 2, 253, no. 1 (JL, 9165), 253-54, no. 2 (JL, 9166), 255, no. 4 (JL, 9241); Cartulaire de l'église Notre-Dame de Paris 1, 27, no. 6 (JL, 9073) (see, 28-29, no. 8); *Historia monasterii S. Augustini Cantuariensis*, 403-04, no. 31 (JL, 8990); PU in Florenz, no. 14 (*IP* 3, 138/15); PUE3, no. 62, 74; PUE1, no. 38; PUF2, no. 48, 57, 58; PUF6, no. 62; PUF8, no. 32 (*PL*, Eugene III, no. 320; JL, 9297); PUP, no. 46; PUF1, Nach. Gott., no. 36; PUF7, Nach. Gott., no. 35.

[2] *PL*, Eugene III, no. 311, 314, 322, 323, 324, 329, 335, 336, 337, 342, 347, 350, 351, 352, 353, 358, 361, 364, 366, 370, 371, 372, 373, 374, 378, 383, 386, 387, 391, 392, 393, 394, 395, 398, 399, 400, 401, 412, 413, 414, 422, 423, 425, 443, 447, 449, 450, 452, 453, 458, 462, 463/545 (*Decretales*, Gregory IX, Bk. 5. XVII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4; JL, 9508/9656), 468, 471, 473, 474, 475, 476, 477, 481, 482, 485, 486, 487, 488, 497, 499, 500, 505, 506, 507, 512, 514, 517, 518, 519, 520, 522, 523 (Otto of Freising, *Gesta*, 120-22; JL, 9605), 524, 528, 529, 531, 532, 533, 537, 541, 542, 543 (*Decretales*, Gregory IX, Bk. 2. VII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 67; *IP* 5, 251/25, 181/6; JL, 9654), 548, 549, 552, 557, 559, 560, 561, 566, 569, 574, 579, 580, 588, 589; JL, 9297a, 9297b, 9318, 9357 (P-H *Iter*, 806), 9373, 9374, 9421a, 9432 (*laudatum* in PUE2, no. 64 [JL, 9433]), 9500, 9650, 9701; *IP* 1, 51/6, 51/7; *IP* 2, *223/7, 44/12, *95/42; *IP* 3, *271/1, *284/19; *IP* 4, *302/8, 71/27; *IP* 5, *278/5, *278/6, 278/7, *527/1, *122/5, *62/212, *236/10, *153/2; *IP* 6/1, *212/3, 188/1, *268/19, 268/20, 381/32, *325/13 (*laudatum* in *PL*, Eugene III, no. 512), *325/12, *361/22,*393/7, *339/1, 60/169, *60/168; *IP* 6/2, *254/27, *382/2, *32/5, *137/23, *32/4, *136/19, *136/20, *137/23, *63/7, *378/20, *379/22; *IP* 7/1, *323/1, *239/23; *IP* 7/2, *104/3, *108/4, *104/4; *IP* 8, *96/2, *179/255, *180/259; *IP* 9, *250/6, *95/50, *256/5; Peter the Venerable, *Letters*, no. 190 (*PL* 189, Bk. 6. XLIV, col. 462-64, esp. col. 462; *IP* 5, *511/8); *Antiquitates* 3, 1167 (*IP* 3, 326/32); *Decretales*, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506); *APRI* 2, no. 396 (JL, 9396); *APRI* 3, no. 94 (JL, 9478), 95 (JL, 9480), 96 (JL, 9479), 99 (JL, 9441); Glanfeuil Forgeries, Appendix, 251, no. 10 (*IP* 8, 180/257); PUE2, no. 64 (JL, 9433), 65 (JL, 9428), 69 (JL, 9546), 71 (JL, 9591), 72 (JL, 9611), 73 (JL, 9503); PUE3, no. 79 (JL, 9547), 90; *EPRI*, no. 205 (JL, 9530), 206 (JL, 9595), 207 (JL, 9632), 210 (JL, 9704), 211 (JL, 9705), 213 (JL, 9733); Archives historiques du Poitou 3, 20, no. 14 (JL, 9314), 20 no. 15 (JL, 9315); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 369-70, no. 941 (JL, 9393); PU in Padova, no. 3 (*IP* 7/1, 315/6); PU in Pisa, no. 4 (*IP* 5, 62/213), 5 (*IP* 5, 63/214); PU in Ligurien, no. 1 (*IP* 6/2, 382/1); PU in Venetien, no. 7 (*IP* 7/1, 106/1); PU in Piemont, no. 7 (*IP* 6/2, 215/12); Urkunden zur Geschichte von Farfa, 177-78, no. 1 (*IP* 2, 68/52); Nachträge zu den PU in Italiens 4, no. 8 (*IP* 5, 196/4); Nachträge zu den PU in Italiens 9, no. 7 (*IP* 7/1, 239/25; P-H *Iter*, 246; JL, 9668); Le bolle pontificie, Montecassino, no. 19 (*IP* 8, 180/256), 20 (*IP* 8, 180/260), 21 (*IP* 8, 181/261); PUE1, no. 45, 54; PUF4, no. 63 (JL, 9378); PUF3, no. 32, 33; PUF5, no. 73, 74, 76, 80 (JL, 9613); PUF2, no. 70; PUS1, no. 59, 61, 62; PUF8, no. 41 (*PL*, Eugene III, no. 547; JL, 9661); PUF9, no. 45 (*PL*, Eugene III, no. 555; JL, 9678); PUS2, no. 62, 67, 68; PUP, no. 51, 52; PUF7, Nach. Gott., no. 36; *Collectio Alani*, Bk. 2. XVIII. 4 (Appendix 87), 261 (Kanonistische Ergänzungen zur *Italia pontificia*, no. 84; S. Chodorow, *Dishonest Litigation*, n. 38).

Number of Letters Concerning or Classified under:	'Confirmation' or 'Assignment' of 'Churches' Broadly[1]	'Confirmation' or 'Assignment' of 'Churches' Broadly Only[2]
Celestine II and Lucius II	20[3]	9[4]
Eugene III—Through 1146	16[5]	2[6]
Eugene III—1147-8 July 1148	12[7]	2[8]
Eugene III—After 8 July 1148 and Undated	20[9]	6[10]
Eugene III—Total	48	10
Total	68	19

Number of Letters not Concerning or Classified under:	'Clerical Temporalities' or 'Clerical *Controversiae*' (% of the Total Letters)	'Clerical Temporalities,' *'Controversiae,'* or the 'Confirmation' or 'Assignment' of 'Churches' Broadly
Celestine II and Lucius II	24 (10.6%)[11]	22 (9.7%)[12]

[1] Also includes papal confirmation of others' 'concessions' or 'assignments' of 'churches.'
[2] That is, not also evidently concerning either clerical temporalities or *controversiae*.
[3] *PL*, Celestine II, no. 29 (*RRH*, no. 222; JL, 8482), 42; *PL*, Lucius II, no. 28 (JL, 8593); JL, 8526, 8529, 8572a; *IP* 1, *51/4, *51/5; *IP* 5, 344/36, *239/5; *IP* 6/2, *36/2; *APRI* 2, no. 383 (JL, 8659) 384 (JL, 8660); *APRI* 3, no. 63 (*IP* 1, 27/17; P-H *Iter*, 238; JL, 8711); PUF8, no. 19 (JL, 8487); PUF1, Nach. Gott., no. 27 (JL, 8584); PUE2, no. 34, 41; PUF5, no. 61; PUF6, no. 53.
[4] *PL*, Celestine II, no. 42; JL, 8526, 8529, 8572a; *IP* 1, *51/4, *51/5; *IP* 5, 344/36, *239/5; *IP* 6/2, *36/2.
[5] *PL*, Eugene III, no. 81, 100, 131; JL, 8815, 8933; *APRI* 3, no. 82 (*PL*, Eugene III, no. 141; JL, 8975); PU in Mailand, no. 9 (*IP* 7/1, 339/38; P-H *Iter*, 239; JL, 8749; the same, nearly, as *Antiquitates* 5, 259-60, *PL*, Innocent II, no. 158, col. 208-09, both from Innocent II); PUF7, no. 57 (JL, 8912); PUF1, Nach. Gott., no. 30 (JL, 8819); Römische Analekten, 35-36, no. 3 (*IP* 1, 77/20); PUE2, no. 42, 55; PUF2, no. 42, 43 (JL, 8961); PUF1, no. 41 (JL, 8756); PUF6, Nach. Gott., no. 15.
[6] JL, 8933; PUF6, Nach. Gott., no. 15.
[7] *PL*, Eugene III, no. 175; JL, 9131, 9217, 9221a; *IP* 6/1, 122/2 (*PL*, Eugene III, no. 306; JL, 9274/9276); *APRI* 1, no. 207 (JL, 8996), 211 (JL, 9074), 218 (JL, 9176); PUE1, no. 38; PUE2, no. 56; PUF5, no. 72; PUF1, no. 51 (JL, 9171).
[8] JL, 9131, 9221a.
[9] *PL*, Eugene III, no. 379, 511, 584; JL, 9367, 9372, 9381, 9384; *IP* 1, *51/8; *IP* 4, *128/2; *IP* 7/2, *108/4; *Antiquitates* 5, 1013 (*IP* 6/2, *391/1—a *charta* of Gotifredus, bishop of Luni); PUE2, no. 59, 60; PUF2, no. 65, 66 (JL, 9685), 69; PUF6, no. 63 (JL, 9358); PUS1, no. 60; PU in westlichen Toscana, no. 6 (*IP* 3, 432/100; JL, 9481); PU in den Abruzzen, no. 4 (*IP* 4, 294/4)?.
[10] *PL*, Eugene III, no. 584; JL, 9381, 9384; *IP* 1, *51/8; *IP* 4, *128/2; PU in den Abruzzen, no. 4 (*IP* 4, 294/4)?.
[11] *PL*, Celestine II, no. 3, 14, 27 (JL, 8480), 29 (*RRH*, no. 222; JL, 8482); *PL*, Lucius II, no. 36, 37, 56, 62, 84, 85 (P. Classen, *Gerhoh von Reichersberg*, 342, no. 33; JL, 8577), 95; JL, 8639 (P-H *Iter*, 236), 8677, 8713; *IP* 2, *33/1; *IP* 5, *60/201, *380/5, *380/6; *IP* 6/2, *254/26; *IP* 7/2, *178/24; Wibald, no. 17 (JL, 8461); PU in Nonantola, no. 3 (*IP* 7/1, 298/1; P-H *Iter*, 238; JL, 8701); PUF5, no. 61; Ältere PU in den päpstlichen Registern 3, no. 2.
[12] See, *PL*, Celestine II, no. 29 (*RRH*, no. 222; JL, 8482); PUF5, no. 61.

Eugene III—Through 1146	20 (9.8%)[13]	19 (9.3%)[14]
Eugene III—1147-8 July 1148	22 (11.8%)[3]	22 (11.8%)
Eugene III—After 8 July 1148 and Undated	29 (6.6%)[4]	29 (6.6%)
Eugene III—Total	71 (8.5%)	70 (8.4%)
Total	95 (9%)	92 (8.7%)

Number of Letters Concerning or Classified under:	Clerics Despoiled by Laymen	% of the Total Letters
Celestine II and Lucius II	53[5]	23.5
Eugene III—Through 1146	41[6]	20.1
Eugene III—1147-8 July 1148	40[7]	21.5

[1] *PL*, Eugene III, no. 1, 3, 7 (JL, 8729), 47, 55, 98, 99, 104, 111 (P. Classen, *Gerhoh von Reichersberg*, 346, no. 41; JL, 8922), 118, 119; JL, 8812, 8815, 8924 (*PL*, Eugene III, no. 113), 8963, 8981; *IP* 2, 211/1; *Chronica S. Bertini,* 801 (*PL*, Eugene III, no. 15-16; JL, 9511); PUE2, no. 43; Nachträge zu den PU in Italiens 9, no. 5 (*IP* 7/1, 298/2; JL, 8737).

[2] See, JL, 8815.

[3] *PL*, Eugene III, no. 159, 227, 241; Mansi 21, 713-18 (JL 2, 52-53), Council of Reims, cc. 1, 5 (*Decretales*, Gregory IX, Bk. 2. I. 2), cc. 7, 9, 14, 17, 18; JL, 9046, 9053a, 9091, 9145, 9159 (*laudatum* in *APRI* 1, no. 394 [JL, 9160]), 9208, 9242; *IP* 2, p *229/12; *IP* 5, *495/27; *IP* 6/2, 135/16; *Vita Eberhardi*, 99 (JL, 9042); PUE3, no. 63.

[4] *PL*, Eugene III, no. 319, 360, 404, 418, 461, 544 (*Decretales*, Gregory IX, Bk. 4. I. 3; JL, 9655), 546 (*Decretales*, Gregory IX, Bk. 2. XX. 5; JL, 9657); JL, 9376, 9609, 9660, 9717; *IP* 3, *37/6; *IP* 4, *191/1, *302/8; *IP* 6/1, *181/37, *346/11, *127/1; *IP* 6/2, *14/30; *IP* 8, 379/1, *326/25, *89/1; *APRI* 2, no. 400 (JL, 9564); PUF8, no. 31, 34 (JL, 9323); *Collectio Lipsiensis*, XXXI. 4 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 53; *IP* 4, 219/2; JL, 9658); PUTJ1, no. 15; St. Hildegard of Bingen, *Letters*, col. 145; *HP*, 88 (JL, 9565); *Annales Ceccanenses*, 283 (*IP* 2, *165/1).

[5] *PL*, Celestine II, no. 16, 20, 23, 24; *PL*, Lucius II, no. 10, 11, 13, 14, 19, 47, 57, 59, 61, 68, 75, 87, 91; JL, 8537, 8548, 8552, 8553, 8576 (P. Classen, *Gerhoh von Reichersberg*, 342, no. 32), 8626, 8696, 8697 (*laudatum* in *EPRI*, no. 207 [JL, 9632]); *IP* 1, *107/9; *IP* 3, *429/83; *IP* 6/1, 78/17, 79/21, *79/22, *79/23, 79/24, 80/25, *80/26; *IP* 8, 179/252 (P-H *Iter*, 236; JL, 8655); Theiner 1, 14, no. 16 (*LC*, 402-03, no. 123); *APRI* 2, no. 379 (JL, 8571), 380 (JL, 8632), 385 (JL, 8695); *EPRI*, no. 188 (JL, 8554), 189 (JL, 8555), 190 (JL, 8612); PUE2, no. 36 (JL, 8625), 38 (JL, 8627), 40 (JL, 8686); PUF5, no. 58, 59, 60; PUF2, no. 19, 22, 24, 27; PUF9, no. 42.

[6] *PL*, Eugene III, no. 9, 28, 29, 34, 38, 39, 59, 87, 92, 114, 121, 123, 124, 134, 135, 145, 146, 147, 148, 149, 150, 151; JL, 8989 (*laudatum* in *PL*, Eugene III, no. 151); *IP* 6/1, *317/3; *APRI* 2, no. 387 (JL, 8774), 389 (JL, 8814) III, 70 (JL, 8826); *EPRI*, no. 197 (JL, 8955), 198 (JL, 8954), 199 (*Decretales*, Gregory IX, Bk. 3. VI. 2, Bk. 3. L. 2, Bk. 5. IX. 1; JL, 8959); *Historia monasterii S. Augustini Cantuariensis*, 404, no. 32 (JL, 8904); PUE2, no. 50 (JL, 8863); PUE3, no. 49, 54, 58; PUF2, no. 32, 41; PUF6, no. 56; PUN, no. 54; PUS2, no. 57; PU in Mailand, no. 9 (*IP* 7/1, 339/38; JL, 8749; P-H *Iter*, 239; the same, nearly, as *Antiquitates* 5, 259-60, *PL*, Innocent II, no. 158, col. 208-09, both from Innocent II).

[7] *PL*, Eugene III, no. 208, 209, 221, 228, 229, 243, 244, 246, 247, 254, 255, 259, 266, 270, 274, 275, 280, 307; JL, 8989, 9045; *IP* 3, *403/31; *IP* 6/2, *192/6; *APRI* 1, no. 207 (JL, 8996), 211 (JL, 9074); Mansi 21, 713-18 (JL 2, 52-53), Council of Reims, c. 6; *EPRI*, no. 200 (JL, 9079), 201 (JL, 9164); Archives de l'Orient latin 2, 253, no. 1 (JL, 9165), 253-54, no. 2 (JL, 9166), 255, no. 4 (JL, 9241); *Chronicon monasterii de Abingdon* 2, 200 (JL, 9100); PUE3, no. 62, 69, 70, 71; PUF2, no. 46, 50; PUF7, no. 66; PUF6, no. 61; PUF1, no. 44.

Eugene III—After 8 July 1148 and Undated	87[8]	19.7
Eugene III—Total	168	20.2
Total	221	20.9

[1] *PL*, Eugene III, no. 316, 329, 344, 349, 383, 392, 393, 394, 398, 399, 400, 401, 403, 416, 425, 427, 428, 429, 430, 431, 433, 435, 459, 460, 463/545 (*Decretales*, Gregory IX, Bk. 5. XVII. 2; Kanonistische Ergänzungen zur *Italia Pontificia*, no. 4; JL, 9508/9656), 465, 467, 468, 469, 470, 471, 472, 473, 474, 475, 488, 492, 493, 494, 505, 506, 507, 513, 514, 524, 528, 529, 532, 552, 557, 563, 564, 565, 570/71; JL, 9412a (JL: *Fragm. hoc Alexandro III. perperam tribuitur*), 9467, 9533; *IP* 5, *250/23, *320/4, *320/6; *IP* 6/2, 161/1, *215/10; *IP* 7/1, *239/23; *HP*, 45-46 (JL, 9287), 45-46 (JL, 9288); *APRI* 1, no. 227 (JL, 9672), 228 (JL, 9665); *EPRI*, no. 207 (JL, 9632), 208 (JL, 9663), 209 (JL, 9670), 212 (JL, 9722); Wibald, no. 347 (*Constitutiones*, 188-89, no. 134; *IP* 1, 180/9), 354 (JL, 9521); PUE3, no. 86; PUE2, no. 63, 71 (JL, 9591); PUF5, no. 73, 74; PUF2, no. 67, 68, 71; PUF8, no. 39 (JL, 9637); PUS2, no. 68; PUF3, Nach. Gott., no. 6; Nachträge zu den PU in Italiens 5, no. 10 (*IP* 5, 477/26); Nachträge zu den PU in Italiens 9, no. 6 (*IP* 7/1, 239/24; JL, 9333); PU in Pisa, no. 4 (*IP* 5, 62/213).

APPENDIX 4 PAPAL JUDGES DELEGATE IN THE PAPAL LETTERS, 1145-53

FRANCE:[1]		Number of Letters in Which Implicated as a Judge Delegate:
Archbishop:	Humbert of Besançon (1134-62)[2]	1[3]
	Geoffrey (Babion) III du Loroux of Bordeaux (1136-58)	7[4]
	Peter de la Châtre of Bourges (ca. 1141-71)	1[5]
	William II de Bénévent of Embrun (1134-69)	5[6]
	Samson de Mauvoisin of Reims (1140-61)	3[7]
	Hugh d'Amiens of Rouen (1130-64)	8[8]
	Hugh de Toucy of Sens (1142-68)	2[9]
	Hugh (Carthusian) of Vienne (ca. 1148-55)	1[10]
Total: Archbishops:	8	28

[1] That is, modern France, including the bishopric of Metz.
[2] Biographical information is primarily from P.B. Gams, *Series episcoporum ecclesia catholicae* (rept., Graz, 1957).
[3] *PL*, Lucius II, no. 10 (3/21/44), and the archbishop of Trier, the bishops of Metz, Toul, Verdun, and Langres, and the abbots of Bellocampo and Belloprato.
[4] Archives historiques du Poitou 3, 9, no. 6 (JL, 8528) (3/18/44); *PL*, Lucius II, no. 79 (12/27/44), and the bishops of Chartres, Soissons, Saintes, and Poitiers; Archives historiques du Poitou 3, 9, no. 7 (apparently not in JL) (Anno 1144); PUF5, no. 62 (5/8/45), and the bishops of Chartres, Soissons, Saintes, and Poitiers; PUF5, no. 69 (JL, 8823) (8/16/46), and the bishops of Chartres and Angoulême; Archives historiques du Poitou 3, 20, no. 14 (JL, 9314) (Anno 1145-49); Archives historiques du Poitou 3, 20, no. 15 (JL, 9315) (Anno 1145-49).
[5] Archives historiques du Poitou 2, 33-34, no. 21 (JL, 8842) (1/12/46), and the bishop of Auxerre.
[6] JL, 8698 (*laudatum* in a letter of Eugene III, Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 364, no. 932 [JL, 8780]) (Anno 1144-45); Cartulaire de l'abbaye de Saint-Victor de Marseille 2, 364, no. 932 (JL, 8780) (9/9/45); *IP* 6/2, *136/20 (Anno 1148), and the abbot of S. Michele della Chiusa (*Clusinum*) (*laudatum* in a *charta conventionis* of 1149); PUS1, no. 59 (3/17/51); PUS1, no. 61 (2/9/53).
[7] JL, 8696 (Anno 1144-45), and the bishops Beauvais and Arras; *PL*, Eugene III, no. 147 (Anno 1145-47), and the bishop of Langres and Bernard of Clairvaux; *PL*, Eugene III, no. 148 (Anno 1145-47), and the bishop of Langres and Bernard of Clairvaux.
[8] PUF2, no. 27 (Anno 1144), and a cardinal and the bishops of Évreux and Seez; PUF2, no. 36 (9/28/45); PUF2, no. 37 (9/28/45); PUF2, no. 41 (3/10/46); Archives de l'Orient latin 2, 253, no. 1 (JL, 9165) (12/18/47), and the bishops of Coutances and Évreux; Archives de l'Orient latin 2, 253-54, no. 2 (JL, 9166) (12/18/47), and the bishops of Coutances and Évreux; Archives de l'Orient latin 2, 255, no. 4 (JL, 9241) (4/14/48), and the bishops of Coutances and Évreux; PUF2, no. 70 (2/9/53), and the bishop of Lisieux.
[9] *PL* Eugene III, no. 422 (1/26/51); *PL*, Eugene III, no. 423 (1/26/51).
[10] *PL*, Eugene III, no. 350 (5/20/49).

Bishop:	Lambert of Angoulême (1136-48)	3[11]
	Alviso of Arras (1131-48)	6[2]
	Hugh de Maçon of Auxerre (Cistercian) (1137-51)	9[3]
	Richard II de Subligny of Avranches (1142-53)	1[4]
	Odo III Clarus of Beauvais (1144-48)	1[5]
	Nicholas of Cambrai (1137/38-67)	1[6]
	Geoffrey II de Lèves of Chartres (1116-49)	5[7]
	Algar of Coutances (1132-50/51)	3[8]
	Rotrud de Beaumont-Le-Roger (de Warwick) of Évreux (1139-65)	4[9]
	Geoffrey (Cistercian) of Langres (ca. 1140-64)	9[10]
	Gerald de Cher of Limoges (ante 1142-77)	2[11]

[1] *PL*, Eugene III, no. 72 (1/16/46), and the bishop of Limoges; PUF5, no. 69 (JL, 8823) (8/16/46), and the archbishop of Bordeaux and the bishop of Chartres; *PL*, Eugene III, no. 127 (9/6/46), and the bishop of Limoges.

[2] *PL*, Celestine II, no. 3 (11/6/43); *PL*, Lucius II, no. 56 (6/16/44), and the bishop of Cambrai; JL, 8696 (Anno 1144-45), and the archbishop of Reims and the bishop of Beauvais; *PL*, Eugene III, no. 11 (4/22/45); *PL*, Eugene III, no. 36 (8/13/45); *PL*, Eugene III, no. 37 (8/16/45), and the bishop of Thérouanne.

[3] PUF5, Nach. Gott., no. 17 (4/30/44), and the bishop of Langres and Bernard of Clairvaux; Archives historiques du Poitou 2, 33-34, no. 21 (JL, 8842) (1/12/46), and the archbishop of Bourges; *PL*, Eugene III, no. 329 (JL, 9306, for the date) (November 1148), and the bishop of Soissons and Abbot Suger of St. Denis; *PL*, Eugene III, no. 386 (5/25/50); *PL*, Eugene III, no. 398 (10/24/50); *PL*, Eugene III, no. 399 (10/24/50); *PL*, Eugene III, no. 400 (October 1150); *PL*, Eugene III, no. 401 (October 1150); *PL*, Eugene III, no. 425 (JL, 9449, for the date) (2/23/51).

[4] PUF2, no. 48 (6/7/47).

[5] JL, 8696 (Anno 1144-45), and the archbishop of Reims and the bishop of Arras.

[6] *PL*, Lucius II, no. 56 (6/16/44), and the bishops of Arras.

[7] *PL*, Lucius II, no. 40 (5/15/44); *PL*, Lucius II, no. 79 (12/27/44), and the archbishop of Bordeaux and the bishops of Soissons, Saintes, and Poitiers; PUF5, no. 62 (5/8/45), and the archbishop of Bordeaux and the bishops of Soissons, Saintes, and Poitiers; PUF5, no. 69 (JL, 8823) (8/16/46), and the archbishop of Bordeaux and the bishop of Angoulême; *PL*, Eugene III, no. 152 (1/3/47).

[8] Archives de l'Orient latin 2, 253, no. 1 (JL, 9165) (12/18/47), and the archbishop of Rouen and the bishop of and Évreux; Archives de l'Orient latin 2, 253-54, no. 2 (JL, 9166) (12/18/47), and the archbishop of Rouen and the bishop of Évreux; Archives de l'Orient latin 2, 255, no. 4 (JL, 9241) (4/14/48), and the archbishop of Rouen and the bishop of Évreux.

[9] PUF2, no. 27 (Anno 1144), and a cardinal and the archbishop of Rouen and the bishop of Seez; Archives de l'Orient latin 2, 253, no. 1 (JL, 9165) (12/18/47), and the archbishop of Rouen and the bishop of Coutances; Archives de l'Orient latin 2, 253-54, no. 2 (JL, 9166) (12/18/47), and the archbishop of Rouen and the bishop of Coutances; Archives de l'Orient latin 2, 255, no. 4 (JL, 9241) (4/14/48), and the archbishop of Rouen and the bishop of Coutances.

[10] *PL*, Lucius II, no. 10 (3/21/44), and the archbishops of Trier and Besançon, the bishops of Metz, Toul, and Verdun, and the abbots of Bellocampo and Belloprato; *PL*, Lucius II, no. 11 (3/21/44); *PL*, Lucius II, no. 19 (4/8/44), and Bernard of Clairvaux; PUF5, Nach. Gott., no. 17 (4/30/44), and the bishop of Auxerre and Bernard of Clairvaux; *PL*, Eugene III, no. 147 (Anno 1145-47), and the archbishop of Reims and Bernard of Clairvaux; *PL*, Eugene III, no. 148 (Anno 1145-47), and the archbishop of Reims and Bernard of Clairvaux; *PL*, Eugene III, no. 487 (1/29/52), and the abbots of Reigny and Tournus; *PL*, Eugene III, no. 514 (6/20/52); *PL*, Eugene III, no. 552 (ca. 1153).

[11] *PL*, Eugene III, no. 72 (1/16/46), and the bishop of Angoulême; *PL*, Eugene III, no. 127 (9/6/46), and the bishop of Angoulême.

	Arnold of Lisieux (1141-81)	1[1]
	Stephen von Bar of Metz (1120-63)	1[2]
	Albert d'Usez of Nîmes (1141-80)	1[3]
	Gilbert de la Porrée of Poitiers (1142-54)	2[4]
	Bernard of Saintes (ca. 1141-66)	2[5]
	Gerard II of Seez (1144-57)	1[6]
	Joscelin de Vierzy of Soissons (1126-52)	4[7]
	Milo of Thérouanne (1131-58)	2[8]
	Henry de Lothringen of Toul (1126-65)	1[9]
	Albert de Chiny of Verdun (1131-56)	1[10]
	William of Viviers (1146-54)	1[11]
Total: Bishops:	22	61
Total: Archbishops and Bishops:	30	89
Abbot of:	Clairvaux (Bernard, 1090-1153)	5[12]
	St. Denis (Suger, ca. 1081-1151)	5[13]

[1] PUF2, no. 70 (2/9/53), and the archbishop of Rouen.
[2] *PL*, Lucius II, no. 10 (3/21/44), and the archbishops of Trier and Besançon, the bishops of Toul, Verdun, and Langres, and the abbots of Bellocampo and Belloprato.
[3] *EPRI*, no. 213 (JL, 9733) (6/28/53), and the bishop of Viviers.
[4] *PL*, Lucius II, no. 79 (12/27/44), and the archbishop of Bordeaux and the bishops of Chartres, Soissons, and Saintes; PUF5, no. 62 (5/8/45), and the archbishop of Bordeaux and the bishops of Chartres, Soissons, and Saintes.
[5] *PL*, Lucius II, no. 79 (12/27/44), and the archbishop of Bordeaux and the bishops of Chartres, Soissons, and Poitiers; PUF5, no. 62 (5/8/45), and the archbishop of Bordeaux and the bishops of Chartres, Soissons, and Poitiers.
[6] PUF2, no. 27 (Anno 1144), and a cardinal, the archbishop of Rouen, and the bishop of Évreux.
[7] *PL*, Lucius II, no. 79 (12/27/44), and the archbishop of Bordeaux and the bishops of Chartres, Saintes, and Poitiers; *PL*, Eugene III, no. 18 (4/29/45) and the bishop of Thérouanne; PUF5, no. 62 (5/8/45), and the archbishop of Bordeaux and the bishops of Chartres, Saintes, and Poitiers; *PL*, Eugene III, no. 329 (JL, 9306, for the date) (November 1148), and the bishop of Auxerre and Abbot Suger of St. Denis.
[8] *PL*, Eugene III, no. 18 (4/29/45), and the bishop of Soissons; *PL*, Eugene III, no. 37 (8/16/45), and the bishop of Arras.
[9] *PL*, Lucius II, no. 10 (3/21/44), and the archbishops of Trier and Besançon, the bishops of Metz, Verdun, and Langres, and the abbots of Bellocampo and Belloprato.
[10] *PL*, Lucius II, no. 10 (3/21/44), and the archbishops of Trier and Besançon, the bishops of Metz, Toul, and Langres, and the abbots of Bellocampo and Belloprato.
[11] *EPRI*, no. 213 (JL, 9733) (6/28/53), and the bishop of Nîmes.
[12] *PL*, Lucius II, no. 19 (4/8/44), and the bishop of Langres; PUF5, Nach. Gott., no. 17 (4/30/44), and the bishops of Auxerre and Langres; *PL*, Lucius II, no. 68 (11/19/44); *PL*, Eugene III, no. 147 (Anno 1145-47), and the archbishop of Reims and the bishop of Langres; *PL*, Eugene III, no. 148 (Anno 1145-47), and the archbishop of Reims and the bishop of Langres.
[13] *PL*, Eugene III, no. 329 (JL, 9306, for the date) (November 1148), and the bishops of Auxerre and Soissons; *PL*, Eugene III, no. 366 (11/7/49); *PL*, Eugene III, no. 372 (Anno 1149?); *PL*, Eugene III, no. 374 (Anno 1149?); *PL*, Eugene III, no. 387 (5/26/50).

	Reigny	3[1]
	Bellocampo (Beauchamp?)	1[2]
	Belloprato (Beaupréau?)	1[3]
	Tournus	1[4]
Total: Abbots:	6	16
Other:	Deacon and Canons of the Church of Toul	1[5]
Total:	37	106

ITALY:		Number of Letters:
Patriarch:	Henry Dandolo of Grado (1131-86)	8[6]
Archbishop:	Robaldo of Milan (1135-45)	12[7]
	Baldwin (former cardinal) (Cistercian)[8] of Pisa (1138-45)	1[9]
	Villano Gaëtani (former cardinal)[10] of Pisa (1146-67)	3[11]
	William of Salerno (1137-52)	1[12]
	Atto II of Sassari (1147-?)	2[13]

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[1] *PL*, Eugene III, no. 485 (1/28/52); *PL*, Eugene III, no. 486 (1/28/52); *PL*, Eugene III, no. 487 (1/29/52), and the bishop of Langres and the abbot of Tournus.
[2] *PL*, Lucius II, no. 10 (3/21/44), and the archbishops of Trier and Besançon, the bishops of Metz, Toul, Verdun, and Langres, and the abbot of Belloprato.
[3] *PL*, Lucius II, no. 10 (3/21/44), and the archbishops of Trier and Besançon, the bishops of Metz, Toul, Verdun, and Langres, and the abbot of Bellocampo.
[4] *PL*, Eugene III, no. 487 (1/29/52), and the bishop of Langres and the abbot of Reigny.
[5] *PL*, Eugene III, no. 574 (2/19/53).
[6] *IP* 5, *60/202 (Anno 1144-45); *IP* 5, *60/203 (Anno 1144-45); *IP* 7/1, 236/14 (1/2/46), and a cardinal; *IP* 7/1, *273/2 (ca. 1146), and cardinals (*laudatum* in *IP* 7/1, 273/3 [1154]); *IP* 7/2, *104/4 (Anno 1151); PU in Pisa, no. 4 (*IP* 5, 62/213) (6/2/52); *IP* 5, *236/10 (Anno 1153); Kanonistische Ergänzungen zur *Italia Pontificia*, no. 66 (*IP* 5, 236/11) (Anno 1153).
[7] *IP* 6/1, *76/10 (JL, 8471) (October 1143); *APRI* 2, no. 379 (JL, 8571) (4/14/44); *APRI* 2, no. 380 (JL, 8632) (5/27/44), and cardinals; *IP* 6/1, 79/24 (August 1144), and cardinals; *IP* 6/1, 80/25 (August 1144), and cardinals; *APRI* 2, no. 382 (JL, 8654) (10/6/44), and cardinals; *APRI* 2, no. 383 (JL, 8659) (10/27/44), and cardinals; *APRI* 2, no. 384 (JL, 8660) (10/27/44), and cardinals; *IP* 6/1, *79/23 (Anno 1144), and cardinals; *IP* 6/2, *13/26 (Anno 1145), and the bishops of Asti and Ivrea; *IP* 6/2, *14/27 (Early 1146); PU in Piemont, no. 4 (*IP* 6/2, 14/28) (4/17/46), and the bishops of Asti and Ivrea.
[8] Cardinal-priest of S. Maria in Trastevere (1137-38); see, B. Zenker, *Mitglieder*, 55-56; P.B. Gams, listed him as a monk of Camaldoli and gave 1137 for the date of his elevation to the archbishopric of Pisa.
[9] *IP* 3, *337/30 (Anno 1143-44), and the bishop of Pistoia.
[10] Cardinal-priest of S. Stefano in Celio monte (1144-46); see, B. Zenker, *Mitglieder*, 134-35.
[11] Le bolle pontificie, Montecassino, no. 20 (*IP* 8, 180/260) (9/1/51-52), and the archbishop of Sassari; Le bolle pontificie, Montecassino, no. 21 (*IP* 8, 181/261) (9/1/51-52), and the archbishop of Sassari; *PL*, Eugene III, no. 541 (*IP* 8, 180/258, for the date) (Anno 1151-52).
[12] *IP* 9, *95/50 (Anno 1152), and the abbot of S. Trinità Cava dei Tirreni (*laudatum in charta transactionis a* 1152 *m. mai. factae inserta in charta Rogerii Beneventan. archiep., Riccardi abb. s. Modesti et Ysidori prioris s. Andreae a.* 1209 *mai.* 14, *transs. a.* 1284 *mai.* 26.).
[13] Le bolle pontificie, Montecassino, no. 20 (*IP* 8, 180/260) (9/1/51-52), and the archbishop of Pisa; Le bolle pontificie, Montecassino, no. 21 (*IP* 8, 181/261) (9/1/51-52), and the archbishop of Pisa.

Total: Patriarchs and Archbishops:	5	27
Bishop:	Jerome of Arezzo (1144-77)	1[1]
	Anselm of Asti (?)	2[2]
	Gregory de Bergamo (Cistercian) of Bergamo (1134-46)	2[3]
	Guido of Ivrea (1123-57)	3[4]
	Litifred of Novara (1122-51)	3[5]
	John Kazo of Padua (1148-?)	1[6]
	Atto (Vallombrosa) of Pistoia (1134-53)	1[7]
	Albert of Reggio Emilia (1139-61)	5[8]
	Rainier of Siena (1128-66)	1[9]
	Theobald of Verona (1135-57)	1[10]
	Lotario of Vicenza (1134-46)	1[11]
Total: Bishops:	11	21
Total: Archbishops and Bishops:	16	48
Abbot of:	S. Sepolcro, Astino	1[12]
	Tiglieto[13]	1[14]
	S. Trinità Cava dei Tirreni	1[15]
	S. Michele della Chiusa (*Clusinum*)	1[16]
Total: Abbots:	4	4

[1] *Decretales*, Gregory IX, Bk. 2. VII. 3 (Kanonistische Ergänzungen zur *Italia Pontificia*, no. 27; *IP* 3, 33/1, 42/2; JL, 9506) (7/27/50-52), and a cardinal.
[2] *IP* 6/2, *13/26 (Anno 1145), and the archbishop of Milan and the bishop of Ivrea; PU in Piemont, no. 4 (*IP* 6/2, 14/28) (4/17/46), and the archbishop of Milan and the bishop of Ivrea.
[3] *IP* 6/1, *370/24 (April 1145); *PL*, Eugene III, no. 43 (10/28/45), and a cardinal and the abbot of Astino.
[4] *IP* 6/2, *13/26 (Anno 1145), and the archbishop of Milan and the bishop of Asti; PU in Piemont, no. 4 (*IP* 6/2, 14/28) (4/17/46), and the archbishop of Milan and the bishop of Asti; *IP* 6/2, *32/4 (Anno 1152).
[5] *IP* 6/1, 267/16 (7/8/44), and cardinals; *IP* 6/1, *267/15 (Anno 1144); *IP* 6/1, *252/3 (Anno 1144-45).
[6] Nachträge zu den PU in Italiens 9, no. 7 (*IP* 7/1, 239/25; P-H *Iter*, 246; JL, 9668) (Anno 1148-53).
[7] *IP* 3, *337/30 (Anno 1143-44), and the archbishop of Pisa.
[8] *IP* 5, 278/7 (11/7/49); *IP* 5, *278/5 (Anno 1145-49); *IP* 5, *278/6 (Anno 1145-49); *PL*, Eugene III, no. 512 (6/9/52); *IP* 6/1, *325/13 (Anno 1145-52).
[9] *IP* 3, *271/1 (Anno 1145-50).
[10] *PL*, Eugene III, no. 134 (12/23/46).
[11] *PL*, Eugene III, no. 135 (12/23/46).
[12] *PL*, Eugene III, no. 43 (10/28/45), and a cardinal and the bishop of Bergamo.
[13] *Monasterium S. Mariae et S. Crucis de Civitatula sive de Tilieto* (ap. Acqui).
[14] PU in Piemont, no. 7 (*IP* 6/2, 215/12) (3/18/52).
[15] *IP* 9, *95/50 (Anno 1152), and the archbishop of Salerno (*laudatum in charta transactionis a* 1152 *m. mai. factae inserta in charta Rogerii Beneventan. archiep., Riccardi abb. s. Modesti et Ysidori prioris s. Andreae a.* 1209 *mai.* 14, *transs. a.* 1284 *mai.* 26.).
[16] *IP* 6/2, *136/20 (Anno 1148), and the archbishop of Embrun (*laudatum* in a *charta conventionis* of 1149).

Other:	Archpriest and Archdeacon of the Church of Brescia[1]	1[2]
	Magister Bulgarus	1[3]
	Provost of *Cavia*[*cum*?]	1[4]
	John of Vado and Adegerius[5] of S. Croce, Judges of Ferrara[6]	1[7]
	Three Lay Judges of Piacenza	1[8]
Total:	29	61

GERMANY:[9]		Number of Letters:
Archbishop:	Hartwig von Stade of Bremen (1148-68)	1[10]
	Conrad I of Salzburg (1106-1147)	2[11]
	Eberhard of Salzburg (1147-64)	4[12]
	Albert von Montreuil of Trier (1131-62)	1[13]
Bishop:	Otto of Freising (1138-58)	1[14]
	Reginbert von Hagenau of Passau (1138-47)	1[15]
	Henry von Wolfrathshausen of Regensburg (1132-55)	1[16]
Total: Archbishops and Bishops:	7	11
Abbot of:	Ebrach	1[17]
	Hirsau	1[18]
Other: Burgundy:	Bishop Amadeus of Lausanne (1110-59)	1[19]

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[1] Delegated by a cardinal.
[2] *IP* 6/1, *339/1 (Early 1151).
[3] *IP* 7/1, *323/1 (Anno 1151) (*laudatum* in a *charta* of 7/8/51).
[4] *IP* 5, *527/1 (Anno 1145-53) (*laudatum in IP* 5, 527/2 [1158]).
[5] Or, Aldigerius.
[6] From the command of a cardinal.
[7] *IP* 7/2, *108/3 (12/9/46) (See, *IP* 5, 184/16; *IP* 7/1, 344/61; *IP* 7/2, 109/7).
[8] *APRI* 3, no. 95 (JL, 9480) (5/10/49).
[9] Not including the bishopric of Metz, which is today in France, but including those sees which are today in Austria.
[10] *PL*, Eugene III, no. 468 (1/9/52).
[11] JL, 8508 (3/1/44), and the bishops of Regensburg and Passau; *PL*, Celestine II, no. 46 (3/1/44).
[12] *PL*, Eugene III, no. 403 (11/21/50); *PL*, Eugene III, no. 460 (JL, 9414, for the date) (11/21/50); *PL*, Eugene III, no. 452 (June 1151); *PL*, Eugene III, no. 453 (June 1151).
[13] *PL*, Lucius II, no. 10 (3/21/44), and the archbishop of Besançon, the bishops of Metz, Toul, Verdun, and Langres, and the abbots of Bellocampo and Belloprato.
[14] *PL*, Eugene III, no. 459 (JL, 9413, for the date) (11/21/50).
[15] JL, 8508 (3/1/44), and the archbishop of Salzburg and bishop of Regensburg.
[16] JL, 8508 (3/1/44), and the archbishop of Salzburg and bishop of Passau.
[17] *PL*, Celestine II, no. 25 (1/2/44), and the abbot of Hirsau.
[18] *PL*, Celestine II, no. 25 (1/2/44), and the abbot of Ebrach.
[19] *PL*, Eugene III, no. 395 (June 1150).

Other: Moravia:	Bishop Henry of Olomouc (1126-50)[1]	2[2]
Total:	11	16

ENGLAND:		Number of Letters:
Archbishop:	Theobald of Canterbury (1139-61)	9[3]
Bishop:	Hilary of Chichester (1147-69)	2[4]
	William de St. Barbara of Durham (1143-52)	1[5]
	Robert Chichester of Exeter (1138-55)	1[6]
	Robert de Bethune of Hereford (1131-48)	3[7]
	Gilbert Foliot of Hereford (1148-63)	1[8]
	Joscelin de Bailleul of Salisbury (1142-84)	1[9]
Total:	7	18

SPAIN:		Number of Letters:
Archbishop:	Bernard of Tarragona (1145-63)	2[10]
	Raymond I of Toledo (1126-1151)	1[11]
Bishop:	Berenguer de Llers of Girona (1147-60)	1[12]
Other:	Raymond de Arènis (Cardinal)[13]	1[14]
Total:[15]	4	5

[1] In the papal letters, this bishop was always addressed as 'the Moravian bishop.'
[2] *PL*, Eugene III, no. 114 (5/25/46); *PL*, Eugene III, no. 362 (10/24/49).
[3] PUE3, no. 47 (6/8/45); PUE3, no. 48 (Anno 1145), and the bishop of Hereford; PUE3, no. 49 (2/4/46); PUE2, no. 64 (JL, 9433) (12/22/50), and the bishop of Chichester; JL, 9432 (Anno 1150), and the bishop of Chichester; PUE2, no. 69 (JL, 9546) (2/5/52); PUE2, no. 71 (JL, 9591) (6/15/52), before the bishop of Hereford; PUE2, no. 73 (JL, 9503) (Anno 1152); PUE3, no. 90 (Anno 1150-53).
[4] PUE2, no. 64 (JL, 9433) (12/22/50) and archbishop of Canterbury; JL, 9432 (Anno 1150), and the archbishop of Canterbury.
[5] PUE3, no. 54 (2/18/46).
[6] PUE2, no. 72 (JL, 9611) (11/3/52).
[7] PUE1, no. 29 (5/16/44), and the bishop of Worcester; PUE3, no. 48 (Anno 1145), and the archbishop of Canterbury; PUE3, no. 79 (JL, 9547) (2/6/52).
[8] PUE2, no. 71 (JL, 9591) (6/15/52), after the archbishop of Canterbury.
[9] PUE3, no. 58 (11/13/46).
[10] PUS2, no. 67 (6/20/53); PUS2, no. 68 (6/20/53), and the bishop of Girona and Raymond de Arènis.
[11] *PL*, Celestine II, no. 44 (2/27/44).
[12] PUS2, no. 68 (6/20/53), and the archbishop of Tarragona and Raymond de Arènis.
[13] Promoted as cardinal-deacon of S. Maria in Via Lata (1158-76); see, A.J. Duggan, Servus servorum Dei, 181-202, here at, 183 and n. 10; see also, B. Zenker, *Mitglieder*, 179-80, who missed this identification.
[14] PUS2, no. 68 (6/20/53), and the archbishop of Tarragona and the bishop of Girona.
[15] See also, *PL*, Eugene III, no. 150 (Anno 1145-47), where the pope referred broadly and singularly to 'judges delegate.'

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